
Appeal Decision

Site visit made on 4 February 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/X2410/W/24/3352125

20 Westfield Drive, Loughborough, Leicestershire LE11 3QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Michael Hutchinson against the decision of Charnwood Borough Council.
 - The application Ref is P/23/2368/2.
 - The development proposed is removal of existing dwelling and erection of 6 x 2 bed flats and 2 x 2 bed dwellings with access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's Decision Notice describes the development as follows 'Outline Application for demolition of existing dwelling and erection of 2no. two-bedroom dwellinghouses and 2no. buildings to provide 6no. two-bedroom flats with all matters reserved except for access and layout only'. This is a more accurate description of the proposed development, and I have determined the appeal on this basis.
3. An updated Preliminary Ecological Appraisal Report¹ (PEA) and a biodiversity metric excel spreadsheet has been submitted to the appeal. This does not alter the appeal scheme. It is not necessary for interested parties to be reconsulted and the Council has had the opportunity to comment on the documents. On this basis, I will accept the information submitted.
4. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Comments were sought from the main parties as to the relevance of the revised Framework to the appeal. I have taken into account the comments made by the main parties in my determination of this appeal.
5. The Council has referred to the Charnwood Local Plan 2021-2037 Pre-Submission Draft (July 2021) (the Emerging Local Plan) in its Decision Notice. The Emerging Plan has reached an advanced stage of preparation, but it has yet to be adopted. Therefore, whilst not formally part of the development plan, having regard to the advice in the paragraph 49 of the Framework, the relevant policies in the Emerging Plan attract moderate weight in my determination of the appeal.

¹ Preliminary Ecological Appraisal Report - 2545_01 (31 July 2024).

Background and Main Issues

6. Although not specified in the Council's Decision Notice, the Officer Report indicates that the proposal would harm the living conditions of the occupiers of 18 Westfield Drive (No 18) with regard to light and outlook. The Officer Report also indicates that the proposal would harm the living conditions of the occupiers of 182 Ashby Road (No 182) and Hickling Court with regard to privacy. These matters have also been addressed within the appellant's statement.
7. Reason for refusal 4 of the Decision Notice relates to whether sufficient information has been provided to demonstrate that there would be no net biodiversity loss. However, the Officer Report refers to Policy CS13 of the Charnwood Local Plan 2011 to 2028 Core Strategy (November 2015) (the CS) which requires development to provide biodiversity net gain, against which the application was assessed.
8. Accordingly, the main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the site and the surrounding area;
 - the effect of the proposed development on the living conditions of the occupiers of 18 Westfield Drive with regard to light and outlook and 22 Westfield Drive with regard to privacy and outlook, and 182 Ashby Road and Hickling Court with regard to privacy;
 - whether adequate living conditions would be provided for the future occupiers of the proposed development with particular regard to outdoor amenity space, light and outlook;
 - whether sufficient information has been provided to demonstrate that the proposed development would not adversely affect protected species; and
 - whether sufficient information has been provided to demonstrate that there would be a net gain in biodiversity having particular regard to the development plan.

Reasons

Character and Appearance

9. The appeal site relates to a single storey detached bungalow at 20 Westfield Drive (No 20) and its curtilage. The site also includes part of the rear garden of 22 Westfield Drive (No 22). The existing bungalow at No 20 has a gable frontage with double bay windows and a dual pitched roof. The hardstanding to the front of the property is bound by a low brick wall and can accommodate multiple vehicles. A timber fence has been erected to the rear of No 20 to provide a smaller garden area to that property. The remainder of the appeal site area is grassed and well maintained.
10. The site adjoins No 22 to the west which is also a detached single storey bungalow with a large front and rear garden. The neighbouring house to the east at 18 Westfield Road (No 18) is a two-storey detached house with sizeable front and rear gardens. Westfield Drive is generally characterised by large single family detached and semi-detached dwellinghouses of varying ages and design with

generously sized gardens to the front and rear. The dwellings are generally evenly spaced and follow a clear building line with properties facing Westfield Drive. The front gardens add verdancy to the street scene while the rear gardens contribute to the spacious character of the area.

11. The proposal seeks to demolish the existing bungalow and garage on the appeal site and erect 2 two-bedroom dwellinghouses and two buildings to provide 6 two-bedroom flats. The proposed layout² shows the buildings arranged around an internal road that runs in a south north direction from Westfield Drive through the middle of the site towards the rear.
12. While Plots 7 and 8 would respect the established building line in Westfield Drive, the proposal would disrupt the rhythm and spacing of buildings in the street. To allow for the internal access road, the proposal would narrow the gap that exists with No 18 and increase the gap with No 22, eroding the pattern of spacing between the buildings and resulting in a built form that would appear incongruous with the existing streetscape.
13. A large portion of the site would be occupied by additional hard surfacing, which together with the proposed dwellings and limited outdoor amenity space, would result in a cramped and over-developed form of housing that is out of character with the site and the surrounding area. The positioning of the proposed buildings in close proximity to the site boundaries would create a visually congested and contrived development.
14. Although the rear garden of the appeal site is not visible from Westfield Drive and the front area is already hard surfaced, its undeveloped green nature nevertheless plays a role in maintaining the site's spacious and verdant character, which in turn contributes to the overall character of the surrounding area.
15. Brockington Place and Kestrel Close are cul-de-sacs located off Westfield Drive containing modern detached dwellings. While the dwellings are not linear to Westfield Road, they form part of a cohesive scheme within their own respective streets. Hickling Court is situated to the east of the appeal site and does not form part of the street scene of Westfield Drive. Therefore, the alignment of the dwellings within these other streets is of little relevance to the appeal.
16. Overall, the scheme would be discordant and incongruous with the prevailing pattern of development in the surrounding area, failing to integrate with its surroundings and harming the cohesive and established character and appearance of the surrounding area due to its cramped and contrived layout.
17. For the reasons given, the proposed development would harm the character and appearance of the site and the surrounding area. It would conflict with the Policy CS2 of the CS and Policy EV/1 of the Borough of Charnwood Local Plan 1991-2006 (January 2004) (the LP) insofar as it requires development to respect and enhance the character of the area.
18. The proposal would not be in accordance with Policy DS5 of the Emerging Local Plan insofar as it requires development to respect and enhance the character of the area. Based on the plan-making stage of the Emerging Plan, I attach moderate weight to Policy DS5.

² Proposed Outline Plans LTD288 10 A.

Living Conditions of Neighbouring Occupiers

19. The appeal site lies to the west of No 18 which has a number of windows on its side west elevation facing the appeal site. There are 3 windows serving habitable rooms on the first floor and 1 window serving a habitable room on the ground floor on the west elevation of No 18. Although matters in relation to scale and appearance would be considered at reserved matters stage, the proposed layout indicates that Plots 7 and 8 would comprise two storey buildings. The Design Guide Supplementary Planning Document (January 2020) (SPD) advises a separation distance of 12.5 metres between ground floor habitable room windows and opposing two-storey windowless flank walls to avoid overbearing impacts. The separation distance between the ground floor habitable room window on the west elevation of No 18 and the flank wall of the dwellings in Plots 7 and 8 would only be around 4 metres, thereby not complying with SPD. Consequently, the proximity of the proposed dwellings in Plots 7 and 8 to No 18 would have a detrimental impact on light to and outlook from the windows on the west elevation of No 18.
20. While the appellant contends that No 18 already faces and is close to the side of No 20 and its garage, the separation distance between No 18 and the dwellings in Plots 7 and 8 would be harmfully reduced as described above. The existing garage of No 20 is set towards the rear end of No 20 so the west elevation of No 18 is not affected by the proximity of the existing garage.
21. My attention has been drawn to the small separation distances between various properties in Westfield Drive. However, I do not have the full details of these schemes and so cannot be certain that the circumstances that led to their existence are the same. In any event, I have considered the appeal proposal on its own merits.
22. The site adjoins No 22 to the west which has two windows serving habitable rooms on the rear elevation. The dwelling proposed in Plot 1 would only be approximately 5 metres from the rear facing windows of No 22. Due to the proximity, position and two storey scale of the proposed dwelling in Plot 1, it would unacceptably erode the outlook from the rear facing windows of No 22 and have an overbearing and oppressive affect. Furthermore, the proximity of the south facing dwelling in Plot 1 to the rear boundary of No 22 would likely result in overlooking of the most private parts of No 22's rear garden and its rear windows.
23. The Council contends that the proposal would harm the privacy of the occupiers of 182 Ashby Road (No 182) and Hickling Court due to overlooking of their respective outdoor amenity spaces. However, due to the proposed intervening outdoor communal space that would be situated between proposed Plots 3 to 6 and 182 Ashby Road (No 182) and Hickling Court, along with the dense vegetative boundary that exists between the sites, there would be no undue harm to the privacy of the occupiers of No 182 and Hickling Court.
24. For the reasons given, while the proposed development would not harm the privacy of the occupiers of No 182 and Hickling Court, it would significantly harm the living conditions of the occupiers of No 18 with regard to light and outlook and No 22 with regard to privacy and outlook. It would conflict with Policy CS2 of the CS and Policy EV/1 of the LP insofar as they require development to protect the amenity of people who live nearby.

25. The Council has referred to conflict with Policy CS13 of the CS in reason for refusal 2 of the Decision Notice. However, this policy relates to biodiversity and geodiversity which is not determinative on this main issue.
26. The proposal would conflict with Policy DS5 of the Emerging Plan insofar as it requires development to protect the amenity of people who live nearby. Based on the plan-making stage of the Emerging Plan, I attach moderate weight to Policy DS5.

Living Conditions of Future Occupiers

27. A thick line of tall hedges on part of the north boundary of the appeal site would encroach on the private outdoor amenity areas of Plots 1 and 2. These would also act to restrict light to and outlook from any windows that would face the hedges. However, there is no reason why the hedges could not be pruned to allow fuller use of the garden space and more light to permeate those plots. It would also follow that the outlook from any rear facing windows of the dwellings in Plots 1 and 2 could be improved as a result of the pruning of the hedges. The shared amenity space serving Plots 3 to 6 would be in the north east corner of the site and bordered by tall vegetation on its east and north boundary. Similarly, there is no reason why these could not be pruned to reduce shadow, allow for more light to evade the outdoor space, and improve the outlook from any east facing windows in those plots. I am satisfied that the associated details could be suitably secured via planning condition in the event the appeal were successful.
28. However, it is unclear from the layout plan whether Plots 7 and 8 would have access to any outdoor amenity space. The plan indicates a small open area of land to the south of a proposed car parking area. Even if the green space shown on the plan were to be allocated as an amenity area for Plots 7 and 8, the quality of the space would be poor given its limited size and irregular shape. Furthermore, it would be separated from the dwellings by the intervening parking spaces. Moreover, its location at the front of the site would not provide sufficient privacy to users of the amenity space.
29. The appellant has pointed to a development in William Street³ which is claimed to contain no amenity space. However, I do not have the full details of the circumstances that led to planning permission being granted and so I cannot be sure that they represent a direct parallel to the appeal proposal. In any case, I have determined the appeal on its own merits.
30. While there are no specific quantity standards in relation to private outdoor amenity space before me, the SPD advises that it is important to provide an adequate level of private amenity space so that future residents can maintain more active lifestyles. Policy CS2 of the CS requires development to protect the amenity of those who will live in the new development. Collectively, Policy CS2 and the SPD support the objective of providing residents with adequate outdoor amenity space.
31. Although the proposal would provide adequate outdoor amenity space for Plots 1 to 6, it has not been demonstrated that there would be adequate outdoor amenity space for Plots 7 and 8. The proximity of the site to public open space

³ Ref P/15/2218/2.

would not fully mitigate deficiency of private outdoor amenity space due to the different purposes they serve.

32. For the reasons given, while the proposed development would provide adequate living conditions for future occupiers of the scheme with particular regard to light and outlook, it would not provide adequate outdoor amenity space for the occupiers of Plots 7 and 8. Consequently, the proposal would conflict with Policy CS2 of the CS.
33. The Council has referred to conflict with Policy CS13 of the CS and Policy EV/1 of the LP in reason for refusal 2 of the Decision Notice. However, these policies relate to biodiversity and geodiversity and design respectively, which are not determinative on this main issue.
34. Policy DS5 of the Emerging Plan requires development to provide attractive, safe and well managed public and private amenity spaces which support active lifestyles. Based on the plan-making stage of the Emerging Plan, I attach moderate weight to Policy DS5.

Protected Species

35. The updated PEA provides the results of the protected and notable species assessments and surveys undertaken. Contrary to the Council's assertion, badgers were surveyed as part of the updated PEA. This showed that the site offered sub-optimal and limited habitat for nesting birds, badgers, small mammals, amphibians, and reptiles. There was no evidence observed of badgers and bats in the survey area. Precautionary methods during construction and the control of artificial lighting could be secured through planning conditions to avoid any potential impacts on any protected and notable species.
36. In light of the above, sufficient information has been provided to demonstrate that the proposed development would not adversely affect protected species. Consequently, the proposal would comply with Policy CS13 of the CS insofar as it requires development proposal to consider the impacts on biodiversity, particularly with regard to protected species and be accompanied by ecological surveys and assessments of the impacts on biodiversity.
37. The Council has referred to Policy CS2 of the CS in reason for refusal 3 of the Decision Notice. However, this relates to high quality design which is not determinative on this main issue.
38. The proposal would conflict with Policy EV6 of the Emerging Local Plan which, among other matters requires development to protect, restore and enhance biodiversity including protected species. Based on the plan-making stage of the Emerging Plan, I attach moderate weight to Policy EV6.

Biodiversity

39. Policy CS13 of the CS requires development to result in a net gain in biodiversity. Supporting guidance to the policy is provided in the Council's Biodiversity Planning Guidance (May 2022).

40. A Biodiversity Impact Assessment Calculation Report⁴ (BIA) was submitted with the application. The BIA shows that the proposed development would result in an overall net gain in biodiversity. The on-site mitigation includes additional trees and hedgerows. However, the purported net gain is poorly supported and unlikely to be realistically deliverable given the amount of built development and hard surfacing proposed on the site.
41. Given the existing nature of the site and development proposed, biodiversity loss is most likely to be inevitable. The appellant suggests that if off site biodiversity compensation is necessary, this could be secured through a Section 106 unilateral undertaking. However, there is no such undertaking before me. Consequently, there is no certainty that net gain in biodiversity would be provided.
42. Furthermore, the Council notes that the baseline value of the site has been underscored due to the unnecessary subdivision of the site into smaller areas and habitat types. Based on the evidence before me and my own observations during my site visit, I concur with the Council's view regarding the underscoring of the baseline biodiversity value of the site.
43. For the reasons given, insufficient evidence has been provided to demonstrate that the proposed development would provide net biodiversity gain. The proposal conflicts with Policy CS13 of the CS insofar as it requires development to result in a net gain in biodiversity.
44. The Council has referred to Policy CS2 of the CS in reason for refusal 4 of the Decision Notice. However, this relates to high quality design which is not determinative on this main issue.
45. The proposal would conflict with Policy EV6 of the Emerging Local Plan which, among other matters requires development to protect, restore and enhance biodiversity. Specifically, the policy seeks 10% biodiversity net gain on site in the first instance or through biodiversity offsetting where appropriate. Based on the plan-making stage of the Emerging Plan, I attach moderate weight to Policy EV6.

Other Matters

46. The appeal site is located outside of, but in the setting of the Loughborough – Ashby Road Conservation Area (CA). While not forming a reason for refusal, I must consider this matter in light of my duties under section 72(1) of the Planning (Listed Buildings and Conservation areas) Act 1990 (as amended). Furthermore, the Framework requires decision-makers to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset). The significance of the CA stems from its historical development and diverse architectural styles. The Council raised no concerns regarding the CA, and I do not disagree for the following reasons. Given the separation distance of the appeal site from Ashby Road and the screening provided by the trees and hedgerows within the grounds of Harry French student accommodation, the significance of the CA would be preserved.
47. The appellant points to a fall-back position in the form of a planning permission⁵ that was previously granted for the demolition of the bungalow at No 22 and the erection of two dwellings on land which includes part of the appeal site. However,

⁴ Biodiversity Impact Assessment Calculation Report P2446_02 (January 2004)

⁵ Ref P/08/1286/2.

there are significant material differences between that scheme and the appeal proposal, including the site area and number of dwellings proposed such that they would not be directly comparable. Therefore, I attached limited weight to it as a fallback position.

48. The appellant contends that the appeal site is all previously developed land (PDL) due to the aforementioned planning permission having commenced. However, that planning permission did not include all of the garden of No 20. Furthermore, the Framework definition of PDL excludes land that was previously developed but where the remains of the permanent structure of fixed surface infrastructure have blended into the landscape. In this case, the footings of the previous development is grassed over and have blended into the landscape. Due to these factors, I do not consider all the land within the appeal site to constitute PDL.
49. Charnwood has a housing land supply of 5.78 years⁶ which is calculated based on the supply of specific and deliverable sites and the area's housing requirement in accordance with the Framework and the Planning Practice Guidance (PPG). The appellant's own housing land supply calculation is based on 'demonstrated performance' or completions and is therefore inconsistent with the prescribed method set out in the Framework and PPG.
50. The appellant contends that the housing supply is heavily dependent on 4 planning permissions which are over four years old and with no builds. However, there is no clear and detailed evidence before me regarding these schemes and that they are not deliverable within the Council's anticipated timescales. Indeed, the Council's Five Year Housing Land Supply paper⁷ indicates that the developers of all major development sites with planning permission (i.e. permission for 10 or more homes) were contacted to provide information about lead in times and build out rates for their sites. For major development sites with detailed permission and where no information was provided by developers, the delivery rates were identified using past delivery performance on that particular site where construction had begun. For those where construction work had not started, the general assumptions for lead in times and build out rates were applied for sites of that size. The approach used by the Council in determining lead in times and build rates as detailed in its Five Year Housing Land supply paper complies with the advice contained in PPG and the Framework. Therefore, I am satisfied that the Council can demonstrate a five year housing land supply.
51. The latest Housing Delivery Test (HDT) measurement⁸ shows that Charnwood has achieved a total housing delivery of 86% against the required number of homes over the rolling three-year period. Consequently, the Council must prepare an Action Plan to address under-delivery. As housing delivery is 86% and above the thresholds described in Footnote 8 of the Framework, paragraph 11(d) of the Framework is not engaged.
52. The appellant contends that the proposed dwellings would be made further adaptable, should the need arise, so that they would be accessible to persons with impaired mobility and to people with other disabilities. The appellant also suggests that renewables and low carbon heating would be incorporated into the scheme, as well as bat, bird and bee boxes, if the appeal were allowed. However, I do not

⁶ Charnwood Five Year Housing Land Supply – 1 April 2024 (updated December 2024).

⁷ Charnwood Five Year Housing Land Supply – 1 April 2024 (updated December 2024).

⁸ Housing Delivery Test: 2023 measurement, Ministry of Housing, Communities and Local Government, 12 December 2024.

have the details regarding such matters before me and there is no certainty that they would be provided. In any event, these factors, along with appearance and landscaping at detailed or future reserved matters stage, would not sufficiently mitigate for the harm identified to the character and appearance of the area or the inadequate living conditions of existing and future occupiers that would result from the proposal.

53. While the Framework encourages making efficient use of land and achieving appropriate densities advises, specifically advising that development should not prevent or discourage change such as increased densities, it also says that decisions should 'take into account the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.' I have found that the proposal would be incongruous with the prevailing character of the surrounding area. There is no substantive evidence before me that the site is within an area being promoted for regeneration and change.
54. I acknowledge that the Framework encourages a flexible approach to applying policies and guidance relating to daylight and sunlight. However, this is on the proviso that the resulting scheme would provide acceptable living standards. Moreover, the Framework seeks to create places with a high standard of amenity for existing and future users and expects decisions to minimise impact on and provide net gains for biodiversity.
55. The appellant has pointed to paragraph 71 of the Framework which relates to the benefits of mixed tenure sites. However, the proposal is in outline and while tenure mix could be incorporated into the scheme at detailed or reserved matters stage, I must assess the proposal based on what is before me. The appellant has not specified the proposed tenure mix so I cannot be certain that the proposal would provide a range of tenures.
56. The appellant suggests that the proposed development would promote healthy and safe communities due to its courtyard design. However, the proposed layout shows that the central space would be occupied by a road rather than a courtyard.
57. A lack of objections from the occupiers of No 22 and Hickling Court and the Council's Environmental Health Manager do not justify allowing development that would be contrary to the development plan.
58. The presumption in favour of sustainable development applies to development proposals that accord with an up-to-date development plan, and I find that the proposal does not.
59. The appellant is critical of the Council's approach to other planning applications that have been allowed in the area⁹ including The Old Glebe and Flanders, the consistency of its decision-making, its handling of the planning application and its planning application portal. However, these are primarily not matters for me to consider as part of this appeal. In reaching my decision I have been concerned only with the planning merits of the case.
60. There is a discrepancy between the Council's Decision Notice and the Officer Report regarding daylight to No 22. Based on the evidence before me and my own

⁹ Ref P/12/2117/2, P/20/0642/2, P/15/2218/2, P/17/2287/2, P/17/2221/2, P/21/2626/2

observations during my site visit, the proposal would not unduly reduce light to the rear facing windows of No 22.

Planning Balance and Conclusion

61. The main parties do not dispute that the principle of housing development at the appeal site is acceptable. I have no reason to disagree with this position. The Framework gives substantial weight to the value of using suitable brownfield land within settlements. The appeal site includes previous garden land in a built-up area so, by definition, is not all 'brownfield' land¹⁰ or PDL. Nonetheless, the proposal would contribute to the overall supply of housing and meet a need for 2 bed residential accommodation in the area. In this respect, the proposal would support the Government's objective of significantly boosting the supply of homes and enhance the housing mix of the area. The scheme would provide social and economic benefits during construction and in subsequent occupation. The appeal site is highly accessible to a wide range of local services and facilities including public transport, schools, open space, shops, leisure, as well as employment opportunities. The Framework recognises the important contribution of small to medium sized sites which could be delivered relatively quickly. However, the great weight to be given to the benefit of using suitable windfall sites within existing settlements is tempered by the relatively small scale of the proposed development. Therefore, the benefits stated above would be modest and carry moderate cumulative weight in favour of the proposal.
62. Compliance with Building Regulations and the development plan with regard to access, highway safety, parking provision, waste storage, cycle storage, noise and disturbance, flood risk, internal space standards, heritage, environmental health, and privacy to No 18 are expectations for all development that weigh neither for nor against the proposal and is considered neutral in the planning balance.
63. The proposal would harm the character and appearance of the site and surrounding area. It would also cause harm to the living conditions of the occupiers of No 18 by virtue of poor outlook and loss of light. Furthermore, the living conditions of the occupiers of No 22 would be harmed by the loss of privacy and poor outlook as a result of the proposal. Moreover, insufficient evidence has been submitted to demonstrate that the proposal would provide a net gain in biodiversity. These harms cumulatively carry significant weight. Accordingly, the appeal scheme conflicts with the development plan, when considered as a whole.
64. The moderate benefits of the proposal do not outweigh the significant collective harms that I have identified. The material considerations, including the stated benefits and the Framework, do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given, the appeal should be dismissed

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INSPECTOR

¹⁰ National Planning Policy Framework (December 2024) Annex 2: Glossary