



Appeal Decision

Inquiry opened on 11 June 2019

Accompanied site visit carried out on the same day

by Mrs J A Vyse DipTP Dip PBM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2nd July 2019

Appeal Ref: APP/K2420/W/19/3222850

Land at Crabtree Farm, Hinckley Road, Barwell, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jeremy Pyatt of Bruton Knowles against the decision of Hinckley and Bosworth Borough Council.
 - The application No 18/00279/OUT, dated 15 March 2018, was refused by a notice dated 17 August 2018.
 - The development proposed comprises up to 25 dwellings, provision of open space and land for a new burial ground.
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Decision

1. For the following reasons the appeal is allowed and planning permission is granted for the erection of up to 25 dwellings, provision of open space and land for a new burial ground on land at Crabtree Farm, Hinckley Road, Barwell, Leics in accordance with the terms of the application, No 18/00279/OUT, dated 15 March 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal relates to an outline application with all matters other than access reserved for future consideration. It is accompanied by a completed planning obligation comprising a unilateral undertaking by way of a Deed under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended).¹ The obligation is a material consideration and I return to its provisions later on.
3. Mr Tyrer (Leicestershire County Council) was to have taken part in the discussion on the Undertaking. In the event, he was unwell and so was unable to attend for that part of the Inquiry. He had, however, submitted a detailed statement explaining the County Council's position that informed the related discussion and which I have taken into account in coming to my decision.

Main Issues

4. The main issues in this case relate to:
 - whether the proposed housing would be in an acceptable location having regard to development plan and national policies that seek to manage the location of new development; and
 - the effect of the development proposed on the character and appearance of the area and on the role and function of the Hinckley/Barwell/ Earl Shilton/ Burbage Green Wedge.

¹ Inquiry Document (ID)12

Reasons for the Decision

5. At the time the planning application was determined, the Council maintained that it could demonstrate a five year supply of housing land. By the time of the Inquiry, however, its position had changed. At the end of the Inquiry it was agreed that the supply was somewhere between 2.94 years (the appellant's position) and 4.15 years (the position of the Council).²
6. Much of the difference in the figures relates to a difference in approach as to whether a number of the supply sites should be considered as deliverable or not having regard to the definition set out in the Glossary to the latest iteration of the National Planning Policy Framework (the Framework). For the appellant, it was maintained that there is nothing in the Glossary definition that indicates that there is some further category of site additional to the two set out after the words '*In particular*' at the start of the second sentence. For the Council, it was argued, having regard to advice in the Planning Practice Guidance³ and a Court of Appeal judgement⁴ that it made no sense for instance, to exclude sites with resolutions to grant permission, or to ignore sites where a developer has confirmed an intention to submit a reserved matters application after the base date for calculating the supply – in essence, it was argued that there is no reason to exclude a 'residual' category of sites and that there is no case, in law, for an artificial cut-off date for obtaining relevant evidence.
7. However, as was agreed during cross-examination, even on the Council's best case, a supply of 4.15 years represents a significant shortfall. It was also a matter of agreement between the parties that significant weight should be attributed to a shortfall in supply anywhere between the two values put forward. On that basis, it is not productive in the context of this appeal to examine the detail of the supply.
8. I recognise that there has been no significant under-delivery of housing in recent years when measured against relevant requirements. It was also confirmed that, in granting planning permissions on sites outwith development boundaries, the Council has been applying its policies flexibly in order to ensure that its housing supply has remained strong. Indeed, as much was recognised by Inspector Robins in his Decision in relation to an appeal on a site to the south of Barwell.⁵ Be that as it may, the Council now finds itself in a position where it cannot currently demonstrate a five year supply of housing land against its current requirement of 480 dwellings per annum. As a consequence, whilst the extent of the shortfall remained a matter of dispute between the parties it was common ground that, with regard to paragraph 11 of the Framework and its associated footnote 7, the housing land supply position on either case means that the policies which are most important for determining this application are to be considered out-of-date, thus engaging the so-called tilted balance.

Location of the Development

9. The Hinckley and Bosworth Core Strategy (2009) sets out a broad settlement hierarchy, with the majority of new housing development to be accommodated in and around the Hinckley sub-regional centre where there is a concentration

² ID8

³ Reference ID: 3-048-20180913 and Reference ID: 3-030-20180913

⁴ *St Modwen Developments Ltd v SoS [2017] EWCA Civ 1643*

⁵ Appeal Ref APP/K2420/W/17/3188948 DL paragraph 87

of services, where accessibility can be maximised and modal choice is available, plus two Sustainable Urban Extensions (SUEs) one of which is at Barwell, with Barwell being identified as an urban area. Paragraph 4.5 of the Core Strategy acknowledges that in order to accommodate the housing requirement it may be necessary to review settlement boundaries through the Site Allocations and Development Management Policies DPD (2016) (DPD).

10. The appeal site is not allocated for development in the DPD. It lies adjacent to but outside the settlement boundary for Barwell as currently defined and thus, for planning policy purposes, lies in the open countryside. It is also within a Green Wedge as defined by the development plan. However, the parties are agreed that the appeal site is in an accessible location, close to the settlement with easy access to the facilities and services that future residents would require on an everyday basis. I have no reason to take a different view. It was also accepted by the Council at the Inquiry that, going forward, some further development would have to take place outside the development boundaries as currently defined in order to meet its housing needs.
11. In light of its accessibility and the Council's current housing land supply position, and subject to my findings below in relation to the effect of the development proposed on the character and appearance of the surrounding area and on the role and function of the Green Wedge I consider that, in principle, this could be an acceptable location for development.

Character and Appearance/Green Wedge

12. It was no part of the Council's case that the proposed burial ground would harm the character and appearance of the area or have an adverse impact on the role and function of the Green Wedge. Indeed, policy 6 of the Core Strategy specifically cites burial grounds as being an acceptable land use within the Green Wedge. On that basis, the thrust of what follows focusses largely on the residential element of the appeal scheme.
13. The 4.35 hectare appeal site is relatively flat and comprises three rectilinear fields that extend back from the southern side of Hinckley Road. It adjoins the defined settlement edge along the eastern and northern site boundaries and is currently in use as grazed pasture, enclosed and divided by mature hedgerows and hedgerow trees that delineate the historic field pattern.
14. Neither the appeal site itself, nor the land that surrounds it, is subject to any national or local landscape designation. Whilst I am in no doubt that the landscape is valued by local residents, it was a matter of agreement between the parties that it is not a valued landscape in the terms of paragraph 170 of the Framework. On the evidence before me, I have no reason to come to a different view.
15. In terms of landscape, the historic field pattern, which also contains remnants of ridge and furrow, could be reflected through retention of the internal hedgerows, a matter that could be secured by condition. I am also mindful that the existing landscape heritage interest is not readily appreciated from outwith the site, even at close proximity and that better examples of ridge and furrow are to be found in the fields to the east of St Mary's Avenue. Nevertheless, the residential element of the development proposed would clearly have a permanent adverse impact on the landscape character of the appeal site itself, replacing small-scale pastoral fields on the settlement edge

(a key sensitivity of this landscape character area⁶) with built form. However, as confirmed by the Council's landscape witness, although the effect would be adverse it would, subject to retention and enhancement of the boundary vegetation, be localised in extent.⁷ I agree – the appeal site has a high degree of visual enclosure, being contained within a network of generally unmanaged mature hedges, hedgerow trees and some individual mature trees. In my view, the degree of containment is such that the site is almost completely separate physically, visually and perceptually from the wider open landscape beyond, which is defined by large open fields bounded by low hedgerows and post and wire fencing.⁸

16. In terms of visual impact, this is not a remote area, the character of the countryside here being influenced to some extent by its proximity to the adjacent urban area of Barwell, with Hinckley Road being one of the main routes into Barwell. Properties on the opposite side of Hinckley Road to the appeal site extend as a linear ribbon of development to the west, well beyond the western boundary of the appeal site, towards the junction with Ashby Road. The allocated Barwell SUE lies behind those properties.
17. I also saw that existing development on this southwestern edge of Barwell forms a relatively hard edge to the settlement here, abutting the adjacent fields, including those of the appeal site. The existing houses are readily apparent, for instance, on the footpath approach across the fields to the south. The adjacent housing is also clearly perceived from within the site itself, where it butts right up to the eastern boundary, although I recognise that the appeal site is not accessible by the public and so the juxtaposition of the housing with the site is not seen from any public vantage point. Housing on Hinckley Road also backs onto part of the northern site boundary. In contrast, the existing vegetation around the appeal site, together with adjacent copses, provides a soft edge that largely screens views of the existing properties, with no obvious long or middle distance views into the site, particularly into the eastern part of the site on which the residential element proposed would be located (as secured by one of the suggested conditions).
18. Even in winter months,⁹ the residential development would, if contained within the eastern part of the appeal site, generally only be perceived from within the appeal site itself, from Hinckley Road at the site entrance, from the ends of Crabtree Road and Powers Road, and from some nearby parts of the local rights of way network. In particular, there would be very little impact in views from the west, since the dwellings would be largely screened by existing/enhanced boundary vegetation not only along the western boundary of the residential area, but also along the western boundary of the proposed burial ground area.
19. I recognise that in views on approach from the south, along the permissive footpath, the development would be less well screened, but it would be seen in the context of the existing development on St Mary's Avenue and Powers Road, with the opportunity to enhance the planted field boundary. Whilst the indicative layout¹⁰ shows buildings close to the boundary here, closer than the existing dwellings, the Council would have control over the final layout of any

⁶ Burbage Common Rolling Farmland as defined in the Council's Landscape Character Assessment (2017)

⁷ Appendix 5 to the proof of Kate Ahern (paragraph A5.9)

⁸ See footnote 5 above

⁹ Photoviewpoints 7 - 11 in the appellant's February 2019 Landscape and Visual Appraisal (LVA).

¹⁰ Page 3 of the appellant's LVA

- residential scheme and could ensure that built form was kept away from the boundary and that boundary planting was reinforced. Even if some of the boundary vegetation transpires not to be in the control of the applicant (a concern of the Council) there is plenty of scope within the site boundaries for significant planting, as agreed by Ms Wilkinson in cross-examination.
20. Subject to conditions to secure the retention and enhancement of existing boundary vegetation both around and within the site, and confining residential development to the eastern part of the site¹¹ (all of which matters can be secured by condition were the appeal to succeed) I am satisfied that whilst the development would cause some visual harm, it would not be unduly intrusive and it would not necessarily appear out of place or incongruous in its context.
21. As confirmed in the related Statement of Common Ground, the Green Wedge is not a landscape designation. Rather, its purpose is to protect the separation of Hinckley, Barwell and Earl Shilton, helping to protect their individual identities and provide easy access from the urban areas into green spaces. In order to ensure that the Green Wedge remains or is enhanced as an attractive contribution to the quality of life for nearby urban residents Core Strategy policy 6 encourages uses that provide appropriate recreational facilities within easy reach of the urban population and promote positive management of land. Policy 20 of the Core Strategy also seeks, among other things, to maintain the Green Wedge as it plays an important environmental and landscape protection role.
22. Whilst residential development is not listed in policy 6 as a use considered as being acceptable in the Green Wedge, the policy does not necessarily preclude other types of development. Rather, it is to be considered against four criteria: it should retain the function of the Green Wedge; retain and create green networks; retain and enhance public access to the Green Wedge; and should retain the visual appearance of the area. It was no part of the appellant's case that this policy is inconsistent with the Framework.
23. In the locality of the appeal site, as illustrated by Plan 10 of the appellant's LVA, the Green Wedge provides physical separation between Hinckley and Barwell in the region of some 430 metres between the properties towards the western end of Hinckley Road (Barwell) and those on Ashby Road (Hinckley) and some 440 metres between properties on Powers Road (Barwell) and Newquay Close (Hinckley) to the southwest. The development proposed would not affect the gap between the existing Hinckley Road/Ashby Road properties. However there would, as a matter of fact, be a reduction in the separation to the southwest of the settlement of some 55 metres, to approximately 385 metres. To that extent, there would be some impact on the function of the Green Wedge. That said, as I saw during my visit, and as shown on photographs in the appellant's LVA, belts of trees along both sides of the A47 (which runs between the two settlements to the south of Barwell) mean that there is very limited intervisibility between the two settlements at these points. Moreover, the smallest gap - some 355 metres between Powers Road (Barwell) and Harwood Drive (Hinckley)- which gap is appreciated from the permissive footpath to the south of the settlement, would be unaffected by the appeal scheme. Consequently, I am satisfied that the role and function of the Green Wedge would not be undermined in any perceptual sense by the development proposed on that approach to the settlement.

¹¹ Pursuant to the Landscape Strategy Plan (11976/P13) in the appellant's LVA

24. Looking at the other criteria, the development would retain and has the potential to create green networks. In addition, the residential element includes a play area that would be accessible to existing residents. The landscape strategy plan in the appellant's LVA illustrates a path linking the burial ground through the residential element to the proposed play area, shown as potentially being sited adjacent to the existing open space area between Crabtree Road and Powers Road. Whether or not those spaces could be physically linked (and I acknowledge that that would be dependent on the consent of the owner of the adjacent land) the footpath through the burial ground and into the play area within the residential scheme¹² would enhance public access into the Green Wedge compared with the existing situation, where there is no public access to any part of the site. For the reasons set out earlier in relation to visual impact, any harm to the visual appearance of the Green Wedge would be minimal.
25. To conclude on this issue overall, the residential element proposed would cause some harm through the loss of a small part of the land of the landscape character type identified. However, given the visual containment of the site, and with the use of conditions to constrain residential development to the eastern part of the site combined with re-enforcement of the existing boundary planting, the development would not be readily perceived in views across the adjacent countryside, including on the approach along Hinckley Road and on the various footpath approaches to this side of the settlement. As such, the harm would be limited. Nevertheless, there would be some conflict with policy DM4 which seeks, among other things, to ensure that development complements or enhances the character of the surrounding area.
26. There was some discussion as to whether policy DM4 is consistent with the Framework, inasmuch as it sets out at the start that it seeks to *protect* the intrinsic character, beauty, open character and landscape character of the countryside. However, it is clear that it is protection from unsustainable development that is sought, rather than a blanket protection of all countryside. In that regard, I find no conflict with the Framework, which sets out a presumption in favour of sustainable development. However, the matter of whether a development can be considered sustainable or not is a product of the overall planning balance, a matter to which I return later. The matter of whether there is any conflict with policy DM1 will also depend on the outcome of the planning balance, since it largely reiterates the presumption in favour of sustainable development.
27. Although I have found there is unlikely to be any perception of harm to the role or function of the Green Wedge, there would, as a matter of fact, be a physical incursion which would result in some harm, bringing the residential element of the scheme into conflict with policies 6 and 20 of the Core Strategy.

Benefits of the scheme

28. The appeal scheme includes a burial ground. The evidence before me was that the existing burial ground in Barwell is likely to reach capacity in some 2/3-5 years' time. Whilst the appeal scheme is not bound to deliver the cemetery, a burial ground is nonetheless part and parcel of the development for which permission is sought, with the planning obligation ensuring that the land would

¹² Ibid. A suggested condition in the event that the appeal was to succeed, requires that the Reserved Matters comply with the general principles shown on that Plan.

be transferred to the Parish Council for the said purpose. In light of the identified need, I consider that the provision of land for a burial ground to be a benefit of the scheme and is a consideration to which I afford modest weight.

29. The provision of up to 25 dwellings at a time of pressing need, up to 5 of which would comprise affordable homes, on a site that is conveniently and sustainably located in terms of accessibility to local services and facilities, is a consideration that carries substantial weight.
30. In addition, although not quantified anywhere, the development would bring benefits in terms of construction expenditure, employment and consumer expenditure. These economic benefits carry significant positive weight.
31. Whilst existing residents would be able to access the proposed open space within the residential development proposed, I am not persuaded that that attracts more than very limited weight. There was no suggestion in the evidence before me, for instance, that there is a shortfall in public open space/play areas in the area.

Other Matters

Local residents' concerns

32. Local residents raised a number of concerns, including effects in terms of highway safety, living conditions, wildlife and flooding.
33. The planning application was accompanied by a Transport Statement, the findings of which were not challenged by any substantiated evidence from other parties. The burial ground and the residential element would each be served by a separate dedicated access in the form of simple priority controlled T-junctions with Hinckley Road, each designed in accordance with the highway Authority's design criteria. A study of accident data demonstrates that there are no particular safety concerns on the highway network in the vicinity of the site that warrant mitigation as part of the scheme.
34. The residential element of the development scheme is forecast to generate 15-16 two-way vehicle trips in the AM and PM peak hours, equating to less than one additional trip on the network every four minutes. That level of trip generation would have a negligible impact on the operation and safety of the adjacent highway network, including the junction of Hinckley Road with Ashby Road.
35. Although no traffic figures are available for the burial ground, it is reasonably anticipated that a number of funeral goers would potentially car-share. Moreover, burials would be likely to take place outside the peak periods on the highway network, as they would usually follow on from a service, with mourners then attending wakes or going back to the family's house. Car parking would be provided on the site, subject to details that would be secured by condition were the appeal to succeed. I have no reason to suppose in this regard, that an appropriate number of spaces could not be provided, or that mourners would necessarily seek to park on the highway. The Highway Authority is content with proposed arrangements in terms of safety and I have no reason to take a different view.
36. There was some suggestion that access to the residential site should be taken off Crabtree Road/Powers Road, both being culs-de-sac that terminate close to

- the eastern site boundary. However, the red line boundary of the site does not abut directly the highway there. In any event, the proposal stands to be determined on its own merits. As set out above, the development is acceptable in highway safety terms – the possibility of some hypothetical alternative access arrangement is not a material consideration of any weight.
37. Local residents also raised concerns about proximity to properties on the opposite side of Hinckley Road with regard to disruption to the use of private access drives and noise and disturbance. The positioning of a priority T-junction opposite dwellings on a carriageway is a typical feature of many highway layouts. Examples local to the appeal site include the junctions of St Mary's Avenue with Hinckley Road, Moat Way with Mill Street, Crabtree Road and Powers Road with St Mary's Avenue. There is nothing inherently unsafe about such arrangements in this location and there is nothing to suggest that their operation results in significant issues for existing residents. The existing houses opposite the appeal site are set back from the main road, behind front gardens, the distance separation being such that noise and disturbance, including from headlights, would be minimal and does not amount to good reason to withhold permission.
38. With regard to wildlife, surveys undertaken for the appellant in February and July 2018 confirm that the site does not contain any habitats or botanical species that may merit designation as a Local Wildlife Site. Moreover, all seven of the tested ponds, including one on the appeal site, returned negative eDNA results for great crested newts. It is therefore unlikely that they would be using the site and surrounding area as a breeding habitat. Subject to conditions, I am content that there would be no material harm to wildlife interests as a consequence of the development proposed. Any wildlife interest could be protected by condition in the event that the appeal was to succeed.
39. The application was accompanied by a flood risk assessment. The appeal site lies within Flood Zone 1, with the report demonstrating that, subject to appropriate conditions, the development would not be at significant risk of flooding and neither would it be likely to increase the risk of flooding elsewhere. Whilst local residents refer to a high water table locally, the investigations undertaken suggest that groundwater flood risk is considered to be low for the site. In addition, in relation to the proposed burial ground, a report commissioned by the Parish Council in 2011¹³ confirms that provided the small glaciofluvial deposit located on the northern boundary of the largest of the three fields is avoided, the site is suitable for interment purposes.

Planning Obligation

40. As mentioned at the outset, the appeal is accompanied by a planning obligation in the form of a unilateral undertaking. Together, the Community Infrastructure Levy (CIL) Regulations 2010 (Regulation 122) and paragraph 56 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms; directly related to the development; and be fairly and reasonably related in scale and kind to the development. In addition, CIL Regulation 123(3) currently restricts the use of pooled contributions. Should I determine that any obligation provided for does not comply with CIL Regulations 122 or 123 and so attach no weight to that obligation in determining the appeal, then the Undertaking

¹³ Core Document C3

- includes a provision whereby that obligation would not be enforceable and would cease to have effect.
41. Subject to the usual contingencies, the Undertaking sets out covenants that would be imposed on the owners in favour of the Borough Council. It makes provision in this regard, for 20% of the dwellings to be constructed as affordable homes, also stipulating the details of the affordable housing units, phasing and occupancy, mix and location. It also binds the owners to transferring the burial ground area to the Parish Council and to providing and then transferring the on-site open space area to a management company, together with a maintenance contribution or, in the alternative, requesting that either the Borough Council or the Parish Council maintain it. In the latter eventuality, the open space area would be transferred to the relevant authority together with a maintenance contribution.
 42. Covenants would also be imposed on the owners in favour of Leicestershire County Council, including provision for the payment of a travel pack contribution or, in the alternative, provision of travel packs to future occupiers directly, and for the payment of financial contributions for bus passes, civic amenity, primary education, library facilities and monitoring.
 43. Both the Borough Council and the County Council submitted CIL compliance statements setting out the justification for the arrangements secured and the contributions sought.¹⁴
 44. Although the Borough Council is supportive of the requested bus passes contribution, the appellant contests their provision. The County Council's Planning Obligations Policy Document (3 December 2014) appended to its Statement, sets out that in relation to highways and transportation matters, the type of development that may trigger provision is that which would lead, among other things, to a material increase in traffic on the road network or has inadequate access to walking, cycling and public transport.¹⁵ The undisputed evidence of the appellant in relation to highways matters was that the traffic generated by the development proposed would have a negligible impact on the operation and safety of the adjacent highway. It was also a matter of agreement between the parties that Barwell has a good range of shops, services and facilities, including an infant and primary school, within 1 kilometre of the site, which are accessible by walking and cycling and are sufficient to meet the everyday needs of future occupiers. In addition, employment opportunities are available on an industrial estate just to the north of the site, with higher order shops, services and facilities and employment opportunities, along with secondary school provision, in Hinckley, some 2 kilometres to the south of Barwell. The closest bus stops lie within 200 metres of the site, with services operating for a large part of the day, including weekends, linking to Hinckley and beyond. As such, the site is well situated in terms of convenient access to services and facilities by means other than the private car.
 45. In light of the forgoing, the development proposed is not one, in my view, that triggers the highway and transportation provisions referred to in the County Council's Document. Whilst I recognise that the Framework requires that

¹⁴ The County Council's statement was submitted as a freestanding document by Mr Tyrer. The Borough Council's statement is at Section 10 of the Council's evidence folder.

¹⁵ The first 'box' at the top of page 38 in Appendix 5 of the County Council's Statement.

appropriate opportunities to promote sustainable transport modes can be/have been taken up, bus pass provision is not necessary in this instance to mitigate any adverse impact of the development proposed. As such, the related contribution does not meet the relevant tests for obligations and I afford it no weight in my determination of this appeal. The same can be said for the provision of travel packs. I recognise that their provision was not contested by the appellant and that they might be desirable in light of the general need to promote sustainable means of transport. However, given the accessibility credentials of the site they are not necessary in this instance and, having regard to the types of development impacts that might justify their provision as set out in the County Council Statement, the related contribution and/or direct provision attracts no weight in my determination of this appeal.

46. At the request of the County Council the Undertaking includes a monitoring fee. Section 7 of the Planning Obligations Policy Document refers to monitoring, suggesting that a fee should be levied on every individual contribution/planning obligation. However, that document is post-dated by a High Court judgement which I drew to the attention of the parties during the case management conference.¹⁶ The judgement is clear that there is nothing in statute, regulation or guidance which suggests that authorities could, or should, claim administration and monitoring fees as part of planning obligations. The judge found that an Inspector is entitled to consider that such fees would be met from a Council's core budget. She also noted that the application in that case was 'routine' and for a 'relatively small development' of up to 25 dwellings, and that no individualised assessment of special costs liable to be incurred had been provided by the Council with, for the most part, monitoring being part of the Authority's day to day function. That is a matter of planning judgement.
47. At up to 25 dwellings, the scheme before me can also be considered as modest, with nothing to indicate that the housing element would need, for instance, to be delivered in phases. I have no reason to suppose, in this regard, that the monitoring likely to be required would be so exceptional that the payment of a related contribution is needed to make the development acceptable in planning terms and so does not meet the relevant tests. I therefore afford the obligation no weight in my determination of this appeal.
48. In relation to other obligations secured, the Borough Council is of the view that the contributions requested by the County Council towards civic amenity provision and library facilities are not CIL compliant, on the basis that any increase in demand would be small given the size of development proposed.
49. I recognise that the modest scale of the development means that any corresponding increase in use of the civic amenity site in Barwell would be modest. However, the evidence of the County Council is that the facility already struggles to cope with existing demand, especially at peak times, and that a new canopy is required to facilitate an increase in the waste storage area. To accommodate the increase in demand, I consider that a contribution towards the necessary works is justified in this case, as set out in the County Council's Statement. Only one other contribution has been secured since 2010 towards that specific project.
50. In relation to the library contribution, the County Council Statement advises that it would be used to enhance the provision of research and study resources

¹⁶ *Oxfordshire County Council v SSCLG [2015] EWHC 186*

at Earl Shilton library. To be justified, a financial contribution must assist in mitigating the impact of unacceptable development to make it acceptable in planning terms - it cannot be used as a tariff on development. Whilst the development proposed would clearly have the potential to increase demand on library services, the evidence before me does not demonstrate that the existing research and study resources are not sufficient to accommodate that, or that there would be any harm in this regard. Accordingly, the requested contribution is not justified and I afford it no weight.

51. The other provisions, namely the provision of affordable housing, arrangements relating to the open space area and the burial ground, and contributions towards primary education are all fully justified as set out in the County Council's submission and the CIL compliance statement and meet the relevant tests. I have therefore taken them into account in coming to my decision.

Overall Planning Balance and Conclusions

52. For the purposes of this appeal, the most relevant development plan policies are contained in the Core Strategy and the DPD. Whilst the Council is in the process of preparing a replacement Local Plan, it is still at a relatively early stage such that only very limited weight can be afforded to it. Neither party relied on it in making their respective cases.
53. Paragraph 11 of the National Planning Policy Framework recites the presumption in favour of sustainable development, setting out what it means for decision-taking. That is reflected in DPD policies DM1 and, to some extent, in DM4. In relation to applications for the provision of housing, Framework paragraph 11 confirms, through its footnote 7, that the policies most important for determining the application are to be considered as out-of-date in situations where the Council cannot demonstrate a five year supply of housing land. In such circumstances, permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.
54. There is an agreed significant shortfall in housing land supply. The homes would be located in an accessible location and would bring economic and other benefits. To be weighed against that is the harm that I have found in relation to the character and appearance of the area and to the role and function of the Green Wedge. In my view, that harm would be limited in the wider context and would not outweigh the significant benefits of the proposal, let alone significantly and demonstrably outweigh them when assessed against the Framework as a whole. In these circumstances, I consider that the appeal scheme would comprise sustainable development and the presumption in favour of such, as set out in the Framework, and the development plan, applies. That is a significant material consideration that outweighs any conflict with some elements of the development plan. Therefore, for the reasons set out above, I conclude on balance that the appeal should succeed.
55. The circumstances of this scheme are very different from those considered by Inspector Robins in relation to a proposal for up to 185 dwellings on a site comprising a number of fields the southeast of Barwell.¹⁷ In that case, the Inspector concluded that whilst the development would be relatively well contained, the incursion of a large area of built development into the landscape would nevertheless be clearly perceived, eroding its current nature and its role

¹⁷ APP/K2420/W/17/3188948 Land east of The Common, Barwell.

in the setting of Barwell, especially when seen from adjacent roads and footpaths. He also found that the development would also represent a significant incursion into the Green Wedge, resulting in a perception of the town extending southwards towards the A47 increasing coalescence and reducing its green lung function. I confirm, in this regard, that I have considered the development before me on its own merits, including the physical context of the site which is very different from that the subject of the earlier appeal.

Conditions

56. Possible conditions were discussed in detail at the Inquiry, on a without prejudice basis, in the light of the related advice in the Framework and the Government's Planning Practice Guidance. The conditions and wording set out in the attached schedule reflect that discussion and are based on the wording in Inquiry Document 9.¹⁸
57. Conditions 1, 2 and 3 relate to the submission of reserved matters and commencement of development. The shortened period for submission of the reserved matters and commencement was agreed given that part of the reason to allow the appeal is a response to an identified need to boost the supply of housing in the absence of a five year supply. To provide certainty, it is necessary to identify the plans to which the decision relates, but only insofar as they relate to the matter of access, which is not reserved for subsequent approval (condition 4). Whilst all matters other than access are reserved for further approval, it is necessary for the outline permission to define the maximum capacity of development (5).
58. In the interest of protecting the established character and appearance of the area and the role and function of the Green Wedge, it is necessary to ensure that development of the site is in general accordance with the Landscape Strategy Plan (6).
59. Conditions 7-16 are necessarily worded as pre-commencement conditions.
60. Since the site is likely to be developed in two stages (residential and burial ground) a Phasing Plan is required to ensure that the necessary infrastructure is delivered at an appropriate stage of development (7). Historically, a farmstead occupied part of the site. Taking a precautionary approach, conditions 8 and 9 are necessary to ensure that any site contamination, or the potential for such, is detected and remediated accordingly in accordance with DPD policy D7.
61. In order to minimise disruption during construction for local residents and those travelling through the area in the interest of highway safety and to protect the environment, condition 10 secures a Construction Environmental Management Plan, with condition 11 controlling hours of working, in accordance with polices DM7 and DM17 of the DPD. In order to avoid pollution and to prevent increased risk from flooding, condition 12 is necessary to secure details of a sustainable surface water drainage scheme, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended, in accordance with DPD policy DM 7.

¹⁸ The numbers that follow reflect the numbering in the schedule below, not the numbering in ID9.

62. A condition securing submission of and compliance with an Arboricultural Method Statement is necessary for the site as a whole, in order to ensure that trees and hedgerows on or adjacent to the site are protected during the construction period in the interest of visual amenity and biodiversity in accordance with DPD policy DM6 (13).
63. Details of existing and proposed ground levels and proposed finished floor levels are necessary in the interest of visual amenity and to mitigate against any residual risk of flooding in accordance with DPD policy DM10 (14). An Ecological Mitigation Plan is necessary in order to protect wildlife and nature conservation interests in accordance with DPD policy DM6 (15).
64. The appellant's desk-based archaeological assessment identifies a low potential for archaeological remains to be encountered on the site, which does not preclude its development. Since a geophysical survey has already been undertaken, a limited trial trenching evaluation is required, in accordance with DPD policy DM13 (16).
65. Conditions 17-19 are to be complied with prior to first occupation of any dwelling or the burial ground being brought into use, as appropriate. They are required in the interest of highway and pedestrian safety in accordance with policies DM17 and DM18 of the DPD.
66. Lastly, a condition relating to external lighting is necessary in the interest of visual amenity and to mitigate disturbance to wildlife, in accordance with policies DM7 and DM10 of the DPD (20).

Jennifer A Vyse
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards, of Counsel

Instructed by the Borough Council

He called

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Principal Planning Officer with the Borough Council (Major Projects)

Sharron Wilkinson
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FOR THE APPELLANT:

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Instructed by Harris Lamb Limited

He called

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Associate at mode transport planning

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Patrick Downes
BSc(Hons), MRICS

Director and Head of Planning at Harris Lamb Limited

INTERESTED PARTIES

Andrew Tyrer
BA(Hons), MRTPI

Development Contributions Officer,
Leicestershire County Council

DOCUMENTS HANDED UP DURING THE INQUIRY

- ID1 List of appearances for the appellant
- ID2 Addendum to the Statement of Common Ground: Housing Land Supply
- ID3 Draft Unilateral Undertaking
- ID4 Letter from Barwell Parish Council to Harris Lamb (7 June 2019)
- ID5 Opening submissions on behalf of the local planning authority
- ID6 Opening submissions on behalf of the appellant
- ID7 Copy of LCC response to the planning application No 19/00393/FUL (change of use of land to new burial ground, new access, landscaping and car parking)
- ID8 Agreed Note updating the parties' housing land supply figures following the related round table discussion
- ID9 Agreed suggested conditions
- ID10 Closing submissions on behalf of the local planning authority
- ID11 Closing submissions on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- ID 12 Completed Unilateral Undertaking

Schedule of Conditions

Appeal APP/K2420/W/19/3222850

Land at Crabtree Farm, Hinckley Road, Barwell Leicestershire

Reserved Matters

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') relating to each phase of development shall be submitted to and approved in writing by the local planning authority before any development begins in respect of that phase. Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

Plans

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans received by the local planning authority on 1 August 2019, but only insofar as they relate to access to the site:

Access Proposals – Residential Access J32-2417-PS-001 rev F

Access Proposals – Burial Ground and Residential Scheme J32-2417-PS-007 rev

Development Parameters

- 5) No more than 25 dwellings shall be constructed on the site.
- 6) All reserved matters applications shall be in general accordance with the Landscape Strategy Plan (Drawing No 11976/P13) at page 32 of the Tyler Grange Landscape and Visual Appraisal dated 15 February 2019.

Pre-Commencement Conditions

- 7) Development shall not begin, including works of site clearance and preparation, unless and until a Phasing Plan for the whole of the application site, identifying the housing and burial ground phases of development, has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in full accordance with the approved Phasing Plan.
- 8) Development shall not begin in any phase, including works of site clearance and preparation (other than as required to be carried out as part of an approved scheme of remediation) until a scheme for the investigation of any potential land contamination in respect of that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how any contamination is to be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be completed prior first use of that part of the site for the intended purpose.
- 9) Any contamination that is found during the course of development on any phase that was not previously identified, shall be reported immediately to the local planning authority. Development on the affected part of the site shall be suspended until an addendum to the scheme for the investigation of all potential land contamination and implementation pursuant to condition 8 above is submitted to and approved in writing by the local planning authority, which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out in accordance with the agreed implementation period before development on that part of the site is resumed or continued.

- 10) Development shall not begin in any phase, including works of site clearance and preparation, unless and until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in full accordance with the approved CEMP which shall remain in force for the construction period for that phase. The CEMP shall detail how, during the site preparation and construction phase, the impact on existing and proposed residential premises and the environment shall be prevented or mitigated from traffic, dust, odour, noise, smoke, light and land contamination. The plan shall detail how such controls will be monitored and a procedure for the investigation of complaints.
- 11) Works of site preparation and/or construction shall not take place in any phase other than between 0730 to 1800 hours Monday to Friday and between 0800 to 1300 on Saturdays. There shall be no working on Sundays or on Bank or Public Holidays.
- 12) No development shall take place in any phase, including works of site clearance, until a surface water drainage scheme for that phase, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed in accordance with the approved details. The submitted scheme shall include infiltration testing to assess the potential for disposing of surface water by means of a sustainable drainage system, should ensure that surface water does not drain onto the public highway and should include the management of surface water on site during construction. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters, including ensuring that no surface water drains onto the public highway;
 - ii) include a timetable for implementation of the scheme in relation to each phase of the development; and,
 - iii) provide a management and maintenance plan for the scheme, for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) No development shall take place in any phases, including works of site clearance and preparation, unless and until an Arboricultural Method Statement for the site as a whole, including details of the position, species, size and condition of each existing tree and hedgerow on and adjacent to the site, and identifying those trees and hedgerows to be retained, has been submitted to and approved in writing by the local planning authority, together with details of measures for the protection of trees and hedgerows to be retained during the course of development. Development shall be carried out at all times in accordance with the approved Arboricultural Method Statement.
- 14) No development shall commence on any phase of development, including works of site clearance and preparation, until such time as the existing and proposed ground levels and, where relevant, proposed finished floor levels, for that phase of development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall begin on any phase, including works of site clearance and preparation, unless and until an Ecological Mitigation Plan for that phase has been submitted to and approved in writing by the local planning authority. The

Plan to be submitted shall include full details of measures to mitigate the impact of the development on ecology at the site and provide biodiversity enhancements within the development. The mitigation and enhancement measures shall be undertaken in accordance with the recommendations of the Preliminary Ecological Appraisal undertaken by BWB (February 2018) and the BWB Botanical Assessment and Great Crested Newt eDNA Survey (July 2018) .

- 16) Development shall not begin in any phase, including works of site clearance and preparation, unless and until a programme of archaeological work has been implemented in accordance with a written scheme of investigation in respect of that phase which shall have previously been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions and:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - vi) the nomination of a competent person or persons/organisation to undertake the works.

Pre-Occupation/Commencement of Use Conditions

- 17) No part of the residential phase shall be occupied until such time as the associated site access and footway link and crossings have been provided in accordance with the details shown on mode transport drawing Nos J32-2417-PS-001 Rev F and J32-2417-PS-007 Rev E.
- 18) No part of the burial ground phase shall be brought into use until such time as the speed cushions have been re-located and the associated site access and footway crossings have been provided in accordance with the details shown on mode transport drawing numbers J32-2417-PS-004 Rev D and J32-2417-PS-007 Rev E.
- 19) The burial ground phase shall not be brought into use for its intended purpose unless and until car parking provision has been laid out and made available for use in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The car parking spaces shall be retained thereafter for the intended purpose.

Lighting

- 20) No external lighting of any phase of the development (excluding that in residential curtilages relating to domestic properties) shall be installed other than in accordance with details that have previously been submitted to and approved in writing by the local planning authority.

-----END OF SCHEDULE-----