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## Appeal Decision

Hearing held on 29 and 30 September 2015

Site visit made on 30 September 2015

**by M Middleton BA(Econ) DipTP DipMgmt MRTPI**

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

**Decision date: 06 November 2015**

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**Appeal Ref: APP/X2410/W/15/3004925**

**Land off Cotes Road, Barrow upon Soar, 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 Morris Homes Ltd, Mr T Sanders, Mrs G Sanders and Ms D Kettle against the decision of Charnwood Borough Council.
  - The application Ref P/14/0685/2, dated 4 April 2014, was refused by notice dated 26 November 2014.
  - The development proposed is the erection of up to 70 dwellings, access, open space and associated works.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. From all that I have read, seen and heard I consider the main issues are
  - a) Whether the proposal is in accordance with the Development Plan and if not
  - b) Whether the Council can demonstrate a five-year supply of deliverable housing sites and if not
  - c) Whether the proposal is sustainable development within the meaning of the National Planning Policy Framework; such that any harm to the character and appearance of the countryside and the local highway network or caused by the accessibility of the appeal site, together with any other harm attributable to the development, is not sufficient to significantly and demonstrably outweigh the benefits of the proposal, such that the presumption in paragraph 14 of the Framework to favourably consider applications for sustainable development, in areas where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable housing sites and / or their Development Plan housing policies are out of date, applies.

### Procedural matters

3. The application is in outline with all matters, apart from the access to Cotes Road, reserved for subsequent approval. It is accompanied by a Design and Access Statement that includes an Illustrative Layout and a Parameters Masterplan, (Drawing No. 014-004-P004 REV B, dated June 2014). This shows development details on a notional layout that includes housing in the north-

eastern part of the site, served from a single access distributor road with secondary cul-de-sacs. Open space is proposed fronting Cotes Road and at the western end of the site and a shelter belt would be planted along the north-western boundary. Whilst it is noted that the details shown on this drawing are only for illustrative purposes, it is nevertheless agreed that the general principles of the submitted layout, as shown on the Parameters Masterplan, should condition the details submitted under the reserved matters.

4. The configuration of the access to Cotes Road is shown on a separate plan (Drawing No. 14210/SKT01 dated 21 March 2014). There are no objections to these details, which are agreed with the Highway Authority, subject to the subsequent approval of their detailed design and construction. These could be made the subject of a condition.
5. The Council confirmed that following the submission of additional information by the Appellants, it and the Environment Agency were satisfied that there was adequate capacity to deal with surface water drainage from the site without requiring land outside of the application site boundary. Subject to the imposition of a suggested condition on any approval, the Council withdrew reason for refusal No. 2.
6. As well as on an accompanied site visit on 30 September, I visited the appeal site and its locality, including Barrow upon Soar village centre and some of the surrounding area, unaccompanied on 28 and 29 September.
7. The Appellants submitted a Deed of Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 on behalf of the developer and the land owners. In this document the developer and the land owners agree, if planning permission is granted, to provide 30% of the total number of dwellings constructed on the site as affordable housing. They also agree to make financial contributions towards the provision or improvement of local education facilities, libraries, police and civic amenity facilities.
8. The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable, if I state in the decision letter that such obligations are unnecessary or otherwise fail to meet the relevant statutory tests. Those contributions that are related to capital expenditure on new or extended facilities and which are necessary to make the proposal acceptable in planning terms, because the existing facilities are at or beyond capacity, are justified. Those that seek contributions towards day to day functions and that are conventionally met from Council tax or other revenue expenditure seem to me to be inappropriate.
9. I am consequently satisfied that the measures relating to the provision of affordable housing and education and the library contribution, in so far as it facilitates building alterations or extensions to facilitate increased usage by the residents of the appeal site, comply with the provisions of Paragraph 204 of the Framework. They are necessary to make the development acceptable in planning terms and meet Regulation 122 of the *Community Infrastructure Levy Regulations* (CIL) 2010.
10. I am not persuaded, on the basis of the evidence before the Inquiry, that the remainder are necessary to make the development acceptable in planning terms and that their absence would justify a refusal of planning permission. As a result such payments are inappropriate. I have dismissed this appeal so

there is no requirement under the CIL Regulation to consider these matters in great detail and, other than in passing or with regard to assessing the sustainability of the proposal, I have not done so.

## **Reasons**

### ***Planning Policy***

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan (DP), unless material considerations indicate otherwise. The DP for the area now consists of the saved policies of the Borough of Charnwood Local Plan 1991-2006 (LP), which was adopted in 2004. It sought to meet the District's development needs until 2006.
12. Saved LP Policy ST/2 strictly controls new development outside of the Limits to Development identified on the Proposals Map. Although the plan period ended some nine years ago, no new development limits have been established. Consequently, those defined in the LP still apply. The proposal is outside of the development limits as defined in the LP and consequently within the open countryside. Saved LP Policy CT/1 seeks to control development in the countryside and lists a number of small scale developments that are acceptable in that area. The proposal is not small scale. Saved LP Policy CT/2 requires development that is acceptable in principle not to harm the character and appearance of the countryside. The proposal is not acceptable in principle and a development of this size could not do other than cause some harm to the character and appearance of the countryside. Consequently it is contrary to these policies of the Development Plan.
13. However, the LP housing development policies are now time-expired. Paragraph 14 of the National Planning Policy Framework (Framework) says that where the relevant DP Policies are out of date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in it indicate that development should be restricted.
14. The DP Policies that regulate the supply of housing within the Borough of Charnwood are out of date. In the context of this appeal site, which is adjacent to the settlement limits and not in the middle of the open countryside, I consider saved LP Policies CT/1 and CT/2 in addition to ST/2 to be housing supply policies because they prevent any housing development outside of the settlement limits unless it is small scale. Paragraph 14 of the Framework is consequently engaged in the context of this appeal.
15. At paragraph 215 the Framework says that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Saved LP Policy ST/1 sets out eighteen measures that the Borough will take to provide for its development needs. Measure ii) requires those features of the natural environment, which are particularly valued by the community, to be conserved, protected and enhanced. It also encourages patterns of development that minimise the emissions of pollutants and promote the conservation of energy. Measure vi) requires the character and appearance of the countryside to be protected for its own sake.

16. The Framework at paragraph 109 refers to the protection of valued landscapes, at paragraphs 93 and 110 it encourages radical reductions in greenhouse gas emissions, the minimising of pollution and the delivery of renewable energy and in its core principles, at paragraph 17, it requires the planning system to recognise the intrinsic character and beauty of the countryside. Saved LP Policy ST/1 is consistent with these requirements and should consequently be given full weight.
17. Saved LP Policy EV/1 requires new development to respect and enhance the local environment and be of a design, layout, scale and mass compatible with the locality. This is effectively requiring good design, which is the thrust of section 7 of the Framework. Safeguarding important viewpoints, landmarks and skylines is again protecting valued landscapes. The Policy should therefore be given full weight.
18. I understand the Appellants' point that this is an outline application, with all matters, apart from the means of access, reserved for subsequent approval. They have nevertheless agreed to the principles of the Parameters Masterplan being the subject of a condition that would control the form of a development Masterplan. Saved LP Policy EV/1 is relevant to this appeal in that context.
19. In not granting planning permission for development where the impact of traffic generated would result in the unsafe and unsatisfactory operation of the highway system, saved LP Policy TR/6 is supported by paragraph 32 of the Framework. However, in pointing out that development should only be refused on transport grounds where the residual cumulative impacts of development are severe, the Framework is clearly raising the standard of the test. Although the harm to the highway system should be weighed in the overall balance, it will only be capable itself of resulting in planning permission being refused on highway grounds in exceptional circumstances.
20. A replacement plan, Charnwood Local Plan 2006 to 2028 Core Strategy (CS) is now at an advanced stage in its adoption process. On 21 September 2015 the Examining Inspector (EI) issued his report on the examination into the CS. He recommended main modifications to make the CS sound, legally compliant and capable of adoption. The Development Strategy is contained in Policy CS 1. Although subject to modification, the general thrust of the locational strategy would not change. In these circumstances Policy CS 1 should be given significant weight.
21. Barrow-upon-Soar is one of Charnwood's designated Service Centres. Policy CS 1 provides for at least 3,000 new homes in the seven Service Centres by 2028. However, I was told that more than this number was already committed. This suggests that there may not be a requirement to review the Limits to Development in order to satisfy the contribution to the CS housing requirement from the Service Centres.
22. Whilst Policies CS2 and CS11 are also relevant, they effectively take forward the thrust of the corresponding parts of Saved LP Policies EV/1 and ST/1.

### ***Housing land supply***

23. When signing the Statement of Common Ground, the Council accepted that Charnwood was unable to demonstrate a five year supply of deliverable housing sites. It considered that on the basis of the trajectory that used the

- baseline of November 2014 and which was used by the EI when assessing the Main Modifications to the CS, it could demonstrate a 4.63 years supply. The Appellants, using a trajectory with a baseline of April 2014 concluded that it could only demonstrate 2.83 years.
24. When the Hearing opened the Council announced that it now considered that it could demonstrate a five year supply of deliverable housing sites. Two recent events appear to have conditioned this change of opinion. In his report on the CS examination, issued on 21 September 2015, the EI says at paragraph 85 "I consider that the Core Strategy would provide for a five year supply of housing land". On 22 September 2015 the Council resolved to grant planning permission for a sustainable urban extension to the west of Loughborough that would contain up to 3,200 dwellings but subject to the signing of a Section 106 Agreement and potentially discharging forty nine conditions.
  25. The Appellant disputed the Council's revised position and there was discussion about the weight to be given to the examining Inspector's report and the deliverability of the strategic sites included in the Council's revised Housing Trajectory that was submitted to the Hearing. A number of verbal statements about the facts relating to the five year supply were made to the Hearing by both parties, about which there was discussion and disagreement. What was lacking was a comprehensive up to date written assessment, with a common base date, that set out the position of both parties and identified where the principal differences were, particularly in the context of dwelling delivery. The Council submitted a revised land supply calculation based on the position at 30 September 2015. However, this differs from the accompanying information contained in the Charnwood Housing Trajectory and the assumed five year requirement is lower than that advanced by the EI.
  26. The EI concluded that the five year requirement would be 5826 as of 1 April 2015. As this was derived following detailed consideration of all of the contributory information at an Examination in Public, I have no reason to question it. The Council's requirement from 2016 is 5,711. The lower number is based on the assumption that in 2015-16, housing completions will be higher than the requirement for the first time since 2007/08. This is by no means certain. The Council suggests that there is now a supply of deliverable sites of 6,655, but including a number of sites that are awaiting the signing of Section 106 Agreements and three Urban Extensions.
  27. There is insufficient information to enable me to undertake a forensic site by site analysis. On the basis of the material put before him and scrutinised at the Examination, the EI says that there would be some flexibility should sites not come forward as planned. In the absence of any substantial evidence to the contrary, I accept that in excess of 4,200 dwellings would come forward from the committed sites that are not Urban Extensions.
  28. To meet the Council's requirement that would require the delivery of at least 1500 dwellings from the Urban Extensions within the five year period. The Appellants doubt the capacity of these sites to deliver this number of dwellings over that period and I agree. Whilst resolutions to grant planning permission have been made in respect of two of them, Leicester Sustainable Urban Extension (LeSUE) and Loughborough Sustainable Urban Extension (LoSUE), the latter was only on 22 September 2015 and both sites require the drafting and signing of extensive Section 106 Agreements before planning permission

- could be granted. Furthermore, that would be the subject of a vast array of conditions, some of which would need to be discharged before development could commence. The third site (Growth North of Birstall (GNB)) has not yet been the subject of a planning application. In common with LeSUE this site is being promoted by land owners and at this stage there is no known developer.
29. The trajectory expects 760 dwellings to be delivered from LuSUE by 2021 and in excess of 2000 from all three sites. The Appellants doubted this and suggested that no more than 150 would be constructed at LuSUE. Draft condition 19 puts a limit on the number of dwellings to be occupied at 600 before highway improvement works to M1 Junction 23 are complete. Given the complexities surrounding the implementation of works on motorways and the timescales usually involved, without any evidence to the contrary, I have to question the likelihood of this being achieved within five years and this site's ability to deliver more than 600 dwellings within the five year period. I was also referred to environmental considerations that have still to be resolved and could also delay implementation. Although the Appellants' assessment may be unduly pessimistic, I do not consider that there is a reasonable prospect of anything like the Council's trajectory at this site being achieved.
30. In addition, using research into housing delivery elsewhere, the Appellants suggest that the average lead in time at sites with a capacity of more than 200 homes is about 2.5 years from the granting of outline planning permission and 3.5 years for allocated sites. None of these sites have got planning permission and in the absence of evidence to the contrary 2.5 years seems to me to be a minimal period of time within which to draw up and sign complicated Section 106 Agreements, discharge multiple conditions that will require the agreement of numerous statutory agencies, implement infrastructure works to open up the land for development and then build and sell the dwellings.
31. If this is correct, then none of the sites would be contributing to the five year supply before 2018/19, whereas the Council expects two of them to begin delivering next year. The third GNB, which does not have a developer or a planning application, is still expected to deliver 75 dwellings in 2017/18. That is not a reasonable prospect. If delivery on all three sites were to be put back, to what, in the context of very large complicated development sites, is probably erring on the side of optimism (i.e. 2.5 years lead in times with house sales commencing in 2018/19), the Council's delivery assumptions would have to be reduced by well over 1,000 dwellings. In such circumstances there would undoubtedly be a shortfall.
32. The Council argued that notwithstanding the above, the EI had only recently confirmed that the CS would provide for a five year supply of housing land. As his examination had been far more comprehensive and forensic than discussion at an Appeal Hearing could ever be, that should be the end of the matter. I was referred to the Wain Homes judgement<sup>1</sup> by both parties. Whilst I have no doubt that the Council strives to adopt the approach advanced in that judgement, it does say that "whether they (the sites) are or are not in fact deliverable within the meaning of (Framework paragraph 47) is fact sensitive in each case; and it seems unlikely that evidence available to an Inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that as a matter of fact (are) deliverable or not".

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<sup>1</sup> Case No. CO/12207/2012 Wain Homes (South West) Holdings Ltd v Secretary of State for Communities and Local Government and Wiltshire Council

33. The CS Hearings were held at the end of 2014 and the beginning of 2015, which is nearly a year ago. It is not unreasonable to suggest that evidence on the delivery of the strategic sites, advanced at that time, could well have been overtaken by events or that obstacles to their early implementation, which were not known about or discussed at the time, have subsequently surfaced. Whilst I am sure that in the fullness of time the Core Strategy and its development proposals would comfortably provide for a five year supply of housing land, I nevertheless conclude that the Council has not demonstrated that at this point in time there is a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements as determined by the EI. In such circumstances, in referring the decision maker to paragraph 14, paragraph 49 of the *National Planning Policy Framework* (Framework) says that relevant policies for the supply of housing should not be considered up-to-date. Unfortunately, for the time being that includes Policy CS1 of the plan that is about to be adopted and consequently it cannot carry any weight in the determination of this appeal.

### ***Sustainable development***

34. The appeal site is a somewhat rectangular field that at the present time is in agricultural use. Its shorter, eastern boundary abuts Cotes Road at its junction with Willow Road, where there is a roundabout from which access would be taken. Beyond this is incidental open space that forms a part of a large new area of housing to the south of Willow Road and north-east of Cotes Road. The appeal site is located at the northern end of Barrow-upon-Soar and adjoined by existing ribbon development on Cotes Road. A small residential development, with large dwellings, on land to the rear of the last house, is nearing completion. Horse riding stables are located beyond this and abut the appeal site's south eastern boundary. The site slopes to the south west where it is next to pasture, beyond which is the Midland Main Line. Behind a hedge, to the north-west, is open countryside that in the appeal vicinity of the site contains a number of isolated dwellings.

35. At paragraph 14 the Framework says that at its heart there is a presumption in favour of sustainable development. At paragraph 6 it points out that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: - economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meanings of environmental or locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position. The situation at the appeal site in this respect is no exception.

### ***Economic role***

36. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. Development creates local jobs in the construction industry, as well as business for and jobs in the building supply industry. These support sustainable economic development to deliver the

homes, business and infrastructure that the country needs. This is particularly important in times of economic austerity and is emphasised in paragraphs 17 and 18 of the Framework. Whilst such jobs and business could be generated by development anywhere and in the context of Charnwood there may well be locations that are more sustainable than the appeal site; that is not the issue. At the present time this Borough still appears to be falling short of its requirements in terms of housing construction. Whilst its CS is soon to be adopted, it will be some time before the Council can demonstrate a five year's supply unless additional land is released. In such circumstances, the availability of any site that could contribute to house building and economic development, in the short term, should attract some weight.

37. The appeal site is available. A well-established building company, with a track record of delivering new dwellings, has an interest in acquiring the site to undertake a development in the short term. A condition could ensure that reserved matters are expedited without undue delay so that development could commence at an early date and thereby make a positive contribution to the need to boost the supply of housing now.
38. The provision of retail / commercial facilities in Barrow-upon Soar is good for a settlement that does not possess a superstore, there being a number of shops that cater for the village's daily convenience needs, as well as public houses / eating facilities and service businesses. Additional population, residing in the appeal development, would undoubtedly generate more expenditure to support these businesses, which in many communities are under threat.
39. There would be benefits to the local economy through increased expenditure in the form of wages and material purchases during the construction period. New jobs would be created for the duration of the development but not all of these would be based or recruited locally. Nevertheless, these economic benefits of the development, as discussed above, weigh in favour of the proposal in the sustainability balance.
40. The site is grade 3 agricultural land and the Framework says that local planning authorities should take account of the best and most versatile agricultural land, promoting the use of poorer quality land in preference to that of a higher quality when significant development of agricultural land is involved. The Framework does not define significant but I agree with the Council that 2.8 hectares is unlikely to fall into this category. There is no dispute that an extensive use of agricultural land will be necessary if Charnwood is to meet its housing requirements so that this loss only represents minor harm.
41. Overall, I find that the proposal would contribute positively to the economic dimension of sustainability. Together these considerations attract moderate weight in favour of the proposal in the overall sustainability balance.

#### *Social role*

42. The proposal would contribute to the supply of both market and affordable housing at a time when the Framework urges local authorities to boost the supply of housing. Charnwood has a demonstrable need for affordable housing. The Section 106 Agreement ensures that 30% of the dwellings to be built within the development would provide this type of accommodation. 80% of these would be for social rent or affordable rent. The other 20% would be intermediate housing.

43. Not only does this Borough not have a five year supply of housing land but its past delivery performance leaves much to be desired. It is such that the Council agrees that a 20% buffer should be applied. The Framework says that steps should be taken to boost the supply of housing now and this is nowhere more relevant than in authorities, such as Charnwood, which have failed and are still failing to deliver. As well as assisting in the provision of affordable homes, the proposal would also contribute to the provision of market housing. However, there is now a housing land supply that is well in excess of four years so that the need to boost the supply is not as urgent as it once was. Nevertheless, the above considerations should attract significant weight in favour of the appeal proposal.
44. The Section 106 Agreement would provide funding to extend the capacity at the local primary school and the library. Whilst these aspects of the proposal would primarily meet need generated by the new residents and are necessary to enable the development to be acceptable in planning terms, the improvements to the school and library would also improve facilities for the benefit of existing residents.
45. The provision of a well laid-out area of public open space, with play facilities within the development, as suggested on the notional layout plans, considered by the Council, would also enable the residents to walk to this facility. They would consequently only need to use those further away to access team sport facilities.
46. The on-site open space and its accompanying play equipment would be located on the south-western part of the site away from Cotes Road and the rest of the village. Consequently, in this location, I would not expect it to be well used by residents from other parts of the village where there are already other facilities.
47. There is no evidence to suggest that following the making of the above payments and the provision of the additional social infrastructure that they would fund, together with the provision of the on-site amenities, the development would have a negative impact upon the village's social infrastructure. In the overall circumstances these benefits do attract some minor weight in the sustainability balance.
48. Barrow-upon-Soar seems to be a socially cohesive settlement. As well as the facilities referred to above, there appears to be a thriving local community with numerous activities taking place throughout the week in a variety of locations. The centre of the village, where most facilities are concentrated, including the nearest convenience shop, is about 1.2 km from a point 200metres into the site. The Appellants estimate that a walking trip would take about fourteen minutes to reach these facilities, the Council a little more.
49. Whilst the secondary school is about a kilometre from the measuring point and within a reasonable walking distance for older children, the primary school is 1.6 kilometres away. This walk, when undertaken briskly on the site visit, took about fifteen minutes. As the return journey would be uphill, I do not consider it to be one that many parents would expect young children to make on a daily basis if there is an alternative means of transport. Whilst there is an hourly day time bus service that travels between Loughborough and Thurmaston, with a bus stop about 600 metres from within the appeal site, the half hourly service between Loughborough and Leicester currently involves a walk to the

village centre. Furthermore, the railway station, with its hourly service in each direction, is about two kilometres away.

50. Manual for Streets<sup>2</sup> describes a walkable neighbourhood as one that is typically characterised by having a range of facilities within ten minutes walking distance (up to about 800 metres) so that residents can comfortably access them on foot. The appeal site would clearly not be a walkable neighbourhood. In promoting sustainable transport, the Framework at paragraph 38 says that key facilities such as primary schools and local shops should be located within walking distance of most properties but it does not define "walking distance". The appeal site is certainly not within easy walking distance of these facilities.
51. Whilst I acknowledge that former government policy considered that walking had the greatest potential to replace short car trips, particularly those under 2km, this does not imply that the average person would walk such distances rather than use a car. The 2014 National Travel Survey suggests that average walking journeys are only 1.13km in length. Furthermore, this statistic is not restricted to measuring journeys to facilities or public transport nodes and measures actual walking journeys rather than the proportions of the population that make them.
52. Whilst I note that a number of residential developments within Barrow-upon-Soar that are similarly located in the context of access to facilities, have been given planning permission that does not justify giving weight to the appeal proposal in this context. I find that the appeal site is not a socially sustainable location for residential development and that this weighs significantly against the appeal proposal.
53. I understand the local concerns about the rate of development and accept that the anticipated growth in population, as a result of already approved development, is likely to be high. It could lead to an undesirable bulge in children seeking school places and undue pressure on other facilities. The appeal proposal could only exacerbate this. However, the responsible authorities have all accepted that there would be no harm if the improvements to be implemented by the Section 106 monies are carried out.
54. Nevertheless, a large number of new residents, however well motivated, moving into the village in a short period of time would be more difficult to absorb than a low number or a high number over a longer period. There would undoubtedly be some harm to social cohesion but in the context of the overall committed growth, the appeal proposal would not be a major component and I can therefore give this harmful consideration no more than minor weight in the sustainability balance.
55. Overall I conclude that in the context of social sustainability the appeal proposal would be not much better than neutral.

### *Environmental role*

#### a) Character and appearance

56. Saved LP Policy EV/1 requires all development proposals to respect and enhance the local environment and be of a design, layout, scale and mass compatible with the locality. Notwithstanding the agreement to condition the

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<sup>2</sup> Manual for Streets, Departments of Communities and Local Government and for Transport, 2007

principals of the Parameters Masterplan, this is an outline application with the details of its layout and design reserved for subsequent approval by the Council. Nevertheless, the information contained in the Design and Access Statement and its supporting documentation does suggest a development with a much higher intensity of development than was traditionally the case along Cotes Road. Additionally, the overall extent and net density of the development does not relate well to the existing pattern of development in this part of Barrow-upon-Soar.

57. In these contexts the proposal is not supported by Saved LP Policy EV/1.

However, the shortfall in housing could not be sustainably provided by further ribbon development and there is nothing to suggest that the grain of existing development along Cotes Road is in some way special. In any event, with careful attention being given to the detail, I can see no reason why this development should not reflect the better examples of layout and vernacular architecture to be found in the area, thereby respecting its character and quality. However, this may well result in noticeably fewer than 70 dwellings being accommodated on the site.

b) Countryside

58. The Framework at paragraph 49 seeks to ensure that the need for housing does not take second place to other policy considerations. Nevertheless, that does not mean that those other considerations, including the protection of the countryside, should be disregarded altogether.

59. The importance of recognising the countryside's intrinsic character and beauty is one of the Framework's core principles, as set out at paragraph 17, and paragraph 109 seeks to ensure that valued landscapes are protected and enhanced. The protection of the environment, in its widest sense, is one of the three 'dimensions' of sustainability, as set out in paragraph 7. The LP, being concerned to conserve, protect and enhance those features of the natural environment, which are particularly valued by the local community, at Saved LP Policy ST/1 ii) is broadly consistent with these aims.

60. The appeal site does not lie within any designated area of special landscape value. Nevertheless, that does not mean that the local countryside landscape has no value or that it is not valued by local people. Nothing in the Framework suggests that non designated countryside may not be valued or protected. Indeed many everyday landscapes are treasured by people and are as much a part of the identity of communities as are outstanding landscapes. Having said that, all landscapes are likely to be valued by someone and there is no dispute that some areas of countryside will have to be built upon if the District's development needs are to be met. It therefore seems to me that countryside protection should be weighed in the sustainability balance against the other relevant considerations.

61. The effect of the proposal on the character and appearance of the countryside and the setting of the village was central to the refusal of planning permission. The Council thought that the development of the appeal site would be detrimental in terms of the loss of open views across the rural landscape, particularly from the junction of Cotes Road and Willow Road. From here there are fine views across the Soar Valley, on a clear day, to the hills of Charnwood Forest beyond.

62. The evidence advanced by local people at the Hearing clearly demonstrated that they valued this landscape for these long distance views. The proposal as advanced in the Design and Access Statement would not retain any aspect of this valued landscape and is consequently contrary to paragraph 109 of the Framework and Saved LP Policy EV/1.
63. Being a medium sized field surrounded by mature mixed hedges, the appeal site is typical of the area but it is otherwise commonplace and by no means special or outstanding. Whilst gradually sloping from a high point near to its north-eastern corner, towards the south-west, it is not elevated and not often visible in the wider landscape.
64. I was only referred to one public footpath (PF115) from where there would be views of a developed appeal site. There is agreement that the appeal development could be clearly seen when travelling south-eastwards along this path and from the vicinity of Fisherman's Cottage. Some of the existing development on Cotes Road is already clearly seen from this part of the path. The extensive building coverage, at the new development to the rear of 125 Cotes Road, ensures that this development unfortunately creates a decidedly urban and uncharacteristic appearance to this aspect of the view. I do not consider it appropriate to replicate this at the appeal site.
65. There was debate about an appropriate density at the Hearing. Whilst density has a bearing on the matter, the bulk and mass of the buildings would also dictate the visual outcome. The illustrative layout proposes a shelter belt along the north-western boundary. If properly established and when in leaf, it could do much to screen this development from the countryside beyond but this would be much less so in winter. However, because of the topography it would be many years before it screened the south-eastern part of the development. This would be particularly so if large buildings were to be a dominant characteristic of the development and on plots that reflected the net density suggested by the outline proposal. A lower net density, combined with low plot coverage, would enable structural planting within the housing areas to reduce the development's impact on views from the countryside to the north-west. However, this would be unlikely to facilitate the construction of 70 dwellings if the proposed land use parameters were followed.
66. To the immediate west of the appeal site, the public footpath is in a depression so that the proposal would not be easily seen from here. From further to the south-east there would be glimpses of the development when walking in a northerly direction but the experience would be in the context of leaving an urban area and if attention was given to the detailed landscaping, of the south-western part of the appeal site, then the development need not appear overly intrusive.
67. Despite the development's set back along Cotes Road, to be consistent with the existing building line, it would be clearly seen from that road when approaching the roundabout. However the recent development south-west of Willow Road is also clearly visible as one passes 139 Cotes Road in a south-easterly direction. That development is unfortunately also seen above the ridge line from some of the lanes and footpaths to the north-east of Barrow-upon-Soar and it clearly does not respect the ridge line. By contrast, a developed appeal site need not be seen in these views. Additionally, if the proposed shelter belt

were to be effectively implemented, then eventually, the development would not seriously impact upon the countryside to its north-west.

68. In common with the development south of Willow Road, which is seen across an open area when entering the village along Cotes Road, the Parameters Masterplan accompanying the appeal application envisaged an open area, adjacent to that road, as a part of the proposed development. With sensitive landscaping there is no reason why the appeal proposal should not enhance the visual quality of this entrance to the village, albeit the boundary of the built development would be moved a few metres to the north.
69. It was suggested that the proposal's access from Cotes Road would result in a different treatment to that being achieved by other developments off Nottingham and Melton Roads and that the experience on entering the village through green gateways would be consequently harmed. However, Willow Road joins Nottingham Road from a four legged roundabout, a highway arrangement no different to the appeal proposal. Whilst the proposed development on the Orchard Kennels site has its entrance off Willow Road, development to the north of the distributor road, at the appeal site and close to the site's entrance, would follow a very similar pattern to that proposed at the Orchard Kennels site in the context of its relationship with Nottingham Road.
70. The approved development at Melton Road does not extend residential development on the eastern side of that road as far as it already exists on the western side. Nevertheless, there is still a four legged roundabout at this entrance to the village, the fourth leg accessing a garden centre.
71. As submitted and with the construction of 70 dwellings, there would be harm to the character and appearance of the countryside, particularly as a result of the loss of the distant views over the Soar valley to Charnwood Forest and the impact of the development on PF15. Together these attract moderate weight against the proposal and even with the layout modifications discussed above there would be some additional minor harm to the other considerations that impact upon the character and appearance of the countryside that I have discussed. The proposal would in any event be contrary to the relevant parts of saved LP Policies ST/1 and EV/1.

#### b) Accessibility

72. Employment and facilities in and around Barrow-upon-Soar are not sufficient to sustain the local population. Consequently, most residents of the appeal site, like the rest of the village, would travel elsewhere for work, as well as for comparison shopping and they would also be likely to visit larger supermarkets elsewhere for many of their convenience purchases.
73. A development of up to 70 new homes would generate significant movement and the hourly bus service that would link the appeal site with Loughborough and Thurmaston would be unlikely to cater for much of this because of its infrequency. The distance to the bus stops in the village centre and the railway station, together with their frequency, equally makes it unlikely that they would make a major contribution to the travel patterns of the residents of the appeal site.
74. I have already discussed the accessibility of the site to village facilities and again have found the appeal site to be not well located in this respect. As a

result, movement to and from the appeal site is likely to be dominated by the use of the private car.

75. Paragraph 34 of the Framework says that decisions should ensure that developments that generate significant movement are located where the need to travel can be minimised and the use of sustainable transport modes can be maximised. The appeal proposal does not meet this requirement. Whilst at paragraph 29 the Framework recognises that opportunities to maximise sustainable transport in rural areas will be different to those in urban areas, at paragraphs 93 and 110 it encourages radical reductions in greenhouse gas emissions. A development as dependent upon the use of the private car, as the appeal development is likely to be, would be unlikely to contribute positively to this. Overall I find that the site has locational disadvantages in the sustainability balance and that this environmental consideration attracts moderate weight against the proposal in that context.

c) Traffic

76. There is local concern about the ability of the road network within and to the west of the village centre to accommodate the extra traffic that the development would generate, which would be additional to that which has yet to arise from the committed development. There is clearly congestion outside of the primary school at school start and finish times and parents bringing children by car to the school from the appeal site could only add to this.
77. There is single lane working on the bridge over the River Soar, which is the main outlet from the village to the A6, Leicester and Loughborough. At peak periods there is queuing from the traffic lights at the bridge along Bridge Street towards South Street, High Street and the village centre. I was told that this was particularly so when there are works taking place in the highway in parts of the village or there is flooding.
78. However, when I visited the site, during the morning peak and at a time of the year when traffic numbers are not significantly affected by holidays, the maximum queue only extended to the roundabout and all standing traffic in both directions passed through the lights in a single cycle. Cotes Road was closed to traffic between the appeal site and the village centre so that some Loughborough and other northern bound traffic that would otherwise have used this route, would have diverted to Bridge Street to leave the village.
79. The highway authority does not consider the congestion at Bridge Street to be severe, which is the test in the Framework at paragraph 32. It has also suggested the imposition of a condition requiring the Appellants to either provide a queue loop detector at the South Street / Bridge Street roundabout or a MOVA validation of the signals along with any necessary alterations to the timing of the signals.
80. Given its location, on the northern outskirts of the village, much of the appeal site traffic destined for Loughborough or other places to the north, is likely to leave the village via Cotes Road rather than Barrow Bridge. The Appellants' assessment, which was not challenged, suggests that the proposal would only add an additional vehicle to this part of the network in nearly three minutes (i.e. about an additional 23 per hour). The proposed improvements to the efficiency of the traffic lights, which would be funded by the development, should more than compensate for this increase in the volume of traffic.

81. Furthermore the development would provide a footpath on the south-western side of Cotes Road, to the north-west of the cemetery, where none currently exists, thereby improving highway safety along this stretch of road. I therefore find that the harm to the free flow of traffic caused by the development would be minimal and that the overall impact of the development on highway safety and the free flow of traffic would be at least neutral.

d) Other environmental considerations

82. A number of local residents are concerned about the impact of the proposal on localised flooding. Unchallenged verbal evidence was presented to the Hearing from residents of Cotes Road about surcharging from the foul sewer in times of heavy rain. The additional development already committed in this part of Barrow-upon-Soar is likely to further exacerbate this problem. The Sewage Undertaker, Severn Trent Water and the Environment Agency have not objected to the proposal as such. The latter has requested that a scheme to dispose of foul drainage should be submitted and approved before any development takes place.

83. On reading the suggested condition, I note that its concerns relate to capacity at the sewage works and the quality of the water from it that enters the water course, rather than the resolution of identified problems upstream of the works. An investigation into the surcharging along Cotes Road and the implementation of any necessary works could be made the subject of a condition. However such research, along with an assessment of the capability of the network to receive effluent from this development and others that are now committed, without any adverse implications, should have been fully investigated at the application stage.

84. Whilst I acknowledge that the Appellants would be prepared to reduce the timescales for submitting reserved matters and starting on site, a requirement to undertake this work at this stage will not speed up the lead in time for the development or assist the objective of delivering housing at an early date to meet the current shortfall.

85. On balance there would be net gains to ecology, on a site that currently has little in the way of flora and fauna. This could be achieved by facilitating the use of some of the amenity open space by wildlife and the planting of trees in parts of these areas, within the areas to be developed and in the screening belt, followed by their effective management. Other positive measures that the Appellant could implement, as a part of the development and which could be ensured through conditions, such as at the proposed surface water attenuation pond, could also provide other ecological benefits. These would weigh in favour of the proposal.

86. It is agreed that through the discharge of appropriate conditions, the development could be of a design, layout, scale and mass compatible with the locality and that it could respect and enhance the local environment. If the detailed design and layout were pursued, in accordance with these objectives, the result would be a development that was of a high quality, safe, sustainable and inclusive, in accordance with the requirements of the relevant Development Plan policies.

87. Nevertheless, overall I conclude that there would be harm to the countryside as a result of the appeal proposal and that not all of it could be acceptably

reduced by mitigation. Additionally, it would not be offset by the benefits to environmental sustainability provided by the ecological improvements. The locational disadvantages of the site also weigh against the proposal in the environmental balance. Consequently there will be long term environmental harm and these considerations attracts significant weight against the proposal in the overall sustainability balance.

### *Sustainability conclusion*

88. The Framework is clear, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Nevertheless, it is rare for any development to have no adverse impacts and on balance many often fail one or more of the roles because the individual disbenefits outweigh the benefits. For the Framework's sustainability test to have meaning then, all of the competing considerations have to be assessed together and an overall balanced conclusion reached.
89. I have found that the proposal would make a positive contribution to the economic aspects of sustainable development through its contribution to economic development and regeneration. I have also found that it would contribute positively to housing supply and would benefit some of the other aspects of social sustainability. These together weigh in favour of the proposal. However, the need to investigate and resolve the surcharging of the foul drainage system in the area creates uncertainty and could delay implementation. This reduces the weight that I should give to the early achievement of the economic and social benefits. Additionally, the site's development would not create a walkable neighbourhood and overall I can only give minimal weight to the social aspect of sustainability.
90. The proposal would undoubtedly have a negative impact on the environment and if the proposal were to be implemented in accordance with the Design and Access Statement and its Parameters Masterplan, this would be significant. It is therefore my judgement that the environmental harm would significantly and demonstrably outweigh the economic and social benefits so that the appeal proposal would not deliver sustainable development within the meaning of paragraphs 18-219 of the Framework. Consequently the provisions of Para 14 do not apply.

### *Conditions*

91. The Framework says that where necessary, appropriate mitigation and enhancement should be secured by conditions. The strengthening of the suggested landscaping close to the site's boundaries, the treatment of the open area adjacent to Cotes Road and structural landscaping within the developed areas could mitigate much of the potential harm to PF115 as well as the visual experience when approaching the site along Cotes Road that would result from the appeal site's development.
92. With such improvements to the site's landscaping, housing development at the appeal site could create a form of built development that was not at odds with the settlement's character or seriously harmful to its setting and the character and appearance of the local countryside. Although there would clearly be a reduction in openness, for the reasons discussed above, the harm to Saved LP Policy ST/1, the view of Charnwood Forest aside, would not be substantial as

- an amended proposal need not cause any more than minor long term harm to the character and appearance of the local countryside.
93. The site slopes away from Cotes Road so that the majority of the dwellings, as proposed, would not impinge upon the view of Charnwood Forest, only those which would be built close to Cotes Road. The omission of built development to the north-west of the site access and close to Cotes Road, together with its replacement with open space, would facilitate the retention of a substantial part of the view of Charnwood Forest as experienced from Willow Road and the roundabout. There would inevitably be a noticeable diminution of the overall view, as currently experienced when passing the site. However, such a change to the layout would reduce the weight that should be given to the reduction in the extent of the view, particularly as the development would no longer be obliterating it.
94. As discussed above, I have also found some of the parameters contained in the Design and Access statement would be likely to result in a development that was out of character with the area. Whilst these concerns could be addressed by conditions and left for resolution at the detailed stage, the considerations would nevertheless have a bearing on the site's overall capacity to accommodate 70 dwellings, unless the extent of residential development and open space were to be substantially changed. In the context of the applied for proposal, I do not consider a scheme that does not have noticeably fewer than 70 dwellings, would reduce the harm to the environment that I have identified and to an extent that enabled the social and economic benefits to outweigh it. Such a number would constitute a materially different scheme to that applied for.
95. Whilst only access is a reserved matter, regulation 9 of the Town and Country Planning Development Management Procedures (England) 2010 says that applications for planning permission for development, which is major development, must be accompanied by a design and access statement about the design and access concepts that have been applied to the development.
96. The Appellants complied with that requirement and the design and access concepts were the subject of consultation. They also agreed that the principles of the accompanying Parameters Masterplan should form the basis of a new Masterplan. My granting planning permission for a scheme that would be fundamentally different to the concepts put forward by the Appellants, in terms of the extent of built development and its density, not to mention its urban form and relationship with Cotes Road, would deprive the public and other consultees of an opportunity to comment on the development concept being granted planning permission and would not be consistent with the 'Wheatcroft principles'<sup>3</sup>.
97. As the guidance notes to planning appeals<sup>4</sup> point out, "the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local

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<sup>3</sup> *Bernard Wheatcroft Ltd v Secretary of State for the Environment*, Journal of Planning Law, 1982, Page 37

<sup>4</sup> Procedural Guide, Planning Appeals (England), PINS 2015

planning authority, and on which interested people's views were sought. Whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people". I do not therefore consider a grant of permission that changed the fundamental nature of the scheme to be an option before me in this case.

***Planning balance and overall Conclusion***

98. The proposal would not protect or enhance the character and appearance of the local countryside or be located such that it was sustainable in the context of its accessibility. The proposal is therefore contrary to saved LP Policies EV/1 and ST/1 and not in accordance with the DP.
99. There is a shortfall in the five year housing land supply and the Framework urges every effort to boost the supply of housing. It seems to me that in the short term there is a need for further housing development proposals in Charnwood to combat this. The appeal proposal is clearly not compatible with the Development Strategy being advanced by Policy CS1 but until there is a five year supply this cannot be given significant weight.
100. Nevertheless I have found that the development as proposal would not be sustainable development within the meaning of Framework paragraphs 18 to 219 and that the changes to the proposal necessary to make it such are not capable of resolution through conditions. Consequently the harm to the Development Plan is not outweighed.
101. The other material considerations, to which I have been referred, including the extensive array of other appeal decisions, none of which closely parallel the circumstances of the appeal proposal, do not indicate that planning permission should be granted. For the reasons discussed above I therefore find that the appeal should be dismissed.

*M Middleton*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Michael Robson	Cerda Planning
Roger Lancaster	Kings Chambers
David Chapman	Hydrock
Pail Gray	PGLA

### FOR THE LOCAL PLANNING AUTHORITY:

Neil Thompson	Charnwood Borough Council
Jamie Foot	Charnwood Borough Council
Sean Gorman	Charnwood Borough Council
David Pendle	Charnwood Borough Council
Chris Holloway	BWB Consultancy
Ashley Bowes	Cornerstone Barristers

### INTERESTED PERSONS:

Nina Pindham	No. 5 Chambers (on behalf of Leicestershire Police)
Michael Lambert	Leicestershire Police
Ian Bentley	District Councillor
Hilary Fryer	District Councillor
Pauline Ranson	District Councillor
Peter Cantel	Barrow-upon-Soar Parish Councillor
Lizzie Marjoram	BSW Law
Peter Needham	Local resident
Ian Tansey	Local Resident

## **DOCUMENTS SUBMITTED TO THE INQUIRY**

- 1 Statement with appendices on behalf of Leicestershire Police
- 2 Statement on behalf of Peter Needham
- 3 Report on the Examination into the Charnwood Local Plan Core Strategy, supplied by the Council
- 4 Charnwood Local Plan Main Modifications, supplied by the Council
- 5 Charnwood Borough Housing Supply, Estimate as at 30<sup>th</sup> September 2015, supplied by the Council
- 6 Charnwood Housing Trajectory 2014-2023, supplied by the Council
- 7 Barrow-upon-Soar, Neighbourhood Plan Consultation Survey, Report 2015, supplied by the Parish Council
- 8 Barrow-upon-Soar, Neighbourhood Plan Consultation Survey, Questionnaire 2014, supplied by the Parish Council
- 9 East Midlands Trains, Travel times of services from Barrow-upon Soar railway station, supplied by the Parish Council
- 10 Roberts Coaches, Bus Service 27, timetable, supplied by the Parish Council
- 11 Committee Report, Application Ref: P/14/09/2014, on land west of Loughborough, supplied by the Council

- 12 High Court Case No. CO/12207/2012: Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government, Wiltshire Council, Christopher Ralph Cornell and Sarah Cecilia Cornell
- 13 Draft conditions
- 14 Revised conditions
- 15 Signed Section 106 Agreement

**PLANS**

- A Dwg No. 14210/SKT03, Extension of proposed footway to meet existing footway, submitted by the Appellant
- B Three suggested locations to be visited on the site visit in addition to the appeal site and its surroundings, submitted on behalf of Peter Needham
- C Dwg No. 014-004-P004 REVC, Parameters Master Plan

**PHOTOS**

- 1 Two photos looking towards Charnwood Forest from the junction of Cotes Road with Willow Road, submitted by the Council
- 2 Six photos looking over the appeal site towards Charnwood Forest, submitted by the Parish Council