



Appeal Decision

Hearing held on 8 and 9 February 2012

Site visit made on 9 February 2012

by M T O'Rourke BA (Hons) DipTP MRTPI

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

Decision date: 20 March 2012

Appeal Ref: APP/X2410/A/11/2161715

Land at Brookfield Farm, Hallfields Lane, Rothley, Leicester LE7 7NF

- 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 Rothley Temple Estates Ltd and Charles Church North Midlands against the decision of Charnwood Borough Council.
 - The application Ref P/10/1886/2, dated 2 September 2010, was refused by notice dated 1 April 2011.
 - The development proposed is residential development of land with associated access, landscaping and open space.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of land with associated access, landscaping and open space at land at Brookfield Farm, Hallfields Lane, Rothley, Leicester LE7 7NF in accordance with the terms of the application, Ref P/10/1886/2, dated 2 September 2010, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal application is in outline with all matters reserved for future consideration. The Design and Access Statement (DAS), Context Plan and Illustrative Layout show a scheme of around 170 dwellings with access from Hallfields Lane. An amended location plan (EMS.2054.01D) indicates an enlarged application site area (edged red), extending to the Rothley Brook, with land in the control of the appellants alongside the Brook and to the south of the development area edged blue. Rothley Temple Estates Ltd owns further land to the south, south east and west. Charles Church is building 149 houses to the east on former allotment land behind the houses in Hallfields Lane.
4. A unilateral undertaking (UU) under Section 106 of the Act has been provided by Rothley Temple Estates Ltd as freehold owner of the land. It includes undertakings in respect of the provision of 30% affordable housing on site and the transfer of land for open spaces, informal amenity area and informal sports area and for a balancing pond. It also provides for financial contributions towards community facilities; health facilities; the police; for open space,

informal area and informal sports area maintenance; for balancing pond maintenance; library facilities; primary and secondary education contributions; a highways contribution and a contribution for transport measures. There are further obligations in respect of the implementation of an approved Landscape Management Plan, the dedication of Lord Macaulay's Walk and other pedestrian links as public footpaths, a pedestrian bridge over the Brook and provision of a surfaced footpath to Town Green Street. I deal with these obligations and the weight they should be given in my reasoning below.

5. Prior to the hearing, the main parties agreed a Statement of Common Ground (SOCG) setting out matters not in dispute and those that remain in contention.

Main Issues

6. The main issue is whether the appeal scheme would constitute acceptable development in the countryside and if not whether there are any material considerations that would outweigh any harm that would arise as a result of the development.

Reasons

7. The site lies immediately to the south of the built up area of Rothley and south of Hallfields Lane. The Rothley Brook runs along the north west boundary separating the site from the residential areas and playground to the north. There are substantial farm buildings and areas of hardstanding next to Hallfields Lane and the site is currently used as a stock and arable farm and for horse grazing.
8. The SOCG gives the gross site area as 6.88 hectares (ha). The indicative masterplan shows the net residential area extending to some 5.11ha with the remaining land identified as open space, for structural landscaping and for storm water balancing giving a density of 27 dwellings per hectare (dph).

Existing and emerging planning policy

9. The formal development plan comprises the East Midlands Regional Plan 2009 (EMRP) and the saved policies of the Borough of Charnwood Local Plan 1991-2006 (LP), adopted in 2004, with the relevant EMRP and LP policies listed in the SOCG. There is also relevant supplementary planning guidance and documents (SPDs).
10. The EMRP has the objectives to address the housing needs of communities, extend housing choice and improve accessibility to jobs, homes and services. Development and economic activity is primarily to be focused on the Principal Urban Areas (PUAs), which include Leicester (policy 3). Policy 12 emphasises the importance for new development outside Leicester to be located within and adjoining settlements, in scale with the existing settlement, to respect environmental constraints and have good public transport linkages.
11. The locational strategy in the LP predates the EMRP and derives from the Leicestershire Structure Plan, adopted in 1994, which aimed to direct development towards the main urban area of Leicester, the county town of Loughborough and to those settlements capable of offering realistic transport choice along specified corridors. LP policy ST/1 sets the overall strategy for Charnwood and the achievement of sustainable development in a co-ordinated, comprehensive and consistent way and which protects the character and

appearance of the countryside for its own sake and gives considerable weight to the protection of the best and most versatile agricultural land.

12. The appeal site is not identified in the LP as a Green Wedge or Area of Local Separation. However it is in the countryside outside the defined limits to development within which LP policy ST/2 seeks to confine development and where policy CT/1 strictly controls development to that meeting certain essential needs in line with well established and long standing national policy. On the face of it therefore the proposed development does not accord with the LP or with national policy on sustainable development set out in Planning Policy Statement 1 (PPS1) and in PPS7. I now turn to consider whether there are material considerations that would indicate a decision other than in accordance with the development plan.

5 year housing land supply

13. Subsequent to the LP, the EMRP set a requirement for Charnwood Borough of 15,800 new homes (790 dwellings per annum (dpa)) of which at least 330 dpa are to be within or adjoining the PUA. PPS3 on Housing requires that local planning authorities identify a 5 year supply of sufficient specific deliverable sites. The Council has agreed there is a shortfall in the 5 year supply for both the district as a whole and for the non-PUA part, within which Rothley falls.
14. On the district wide figures the SOCG shows a shortfall of between 2,069 and 3,056 units. The difference between the parties is that the appellants have included a 20% allowance for non-implementation and do not agree on the deliverability of two sites, both of which have been the subject of recent applications to extend the time limit for implementation.
15. A start in 2013/14 on the former Richard Roberts site is described as '*a best guess*', and there does not appear to be a reasonable prospect that it will come forward to deliver the indicated numbers within the next 5 years. The recently renewed permission at the Former Towles building is for mainly one bed flats which does not reflect current market requirements and with delivery of all the units pushed back to year 5 with no developer yet on board, its implementation also appears uncertain.
16. The 20% additional allowance was justified as coming from proposals in the draft National Planning Policy Framework (dNPPF), described by the Minister as a buffer to reflect the drop off of sites. The final NPPF is awaited and the dNPPF can be given only limited weight at this stage. In that the components of supply have already been critically examined to exclude sites unlikely to come forward, to then apply a non-implementation allowance as the appellants have done here seems unduly onerous, particularly when the Council does not include Strategic Housing Land Availability Assessment sites in their assessment and starts the 5 year supply period a year ahead from when the assessment was prepared. Nonetheless, based on the June 2011 assessment of housing land supply, there is only 2.24 years of supply in the district. The Council has provided figures for October 2011 which are not a full update and not based on a site by site assessment yet still indicate a supply position that is only marginally better.
17. For the non-PUA part of the district, the Council say there is 3.9 years supply whereas on the appellants calculate it as only 2.9 years, on the basis of the June 2011 figures. On the Council's updated October 2011 figures there would

be 4.25 years supply. The EMRP split the housing requirements but I was told that development in the PUA was progressing slowly with pressure for the development of non-allocated sites in the non-PUA villages to address the housing supply shortfall. The appellants' trajectory indicates a continuing and worsening supply position in the district.

18. The housing shortfall is to be addressed in the Core Strategy (CS), to be based on the EMRP numbers. The CS had been scheduled to be published in submission draft in February 2012 with work on the Site Allocations Development Plan Document (DPD) starting in September. However work on the CS has been put back and a new Local Development Scheme is being prepared. Thus policy action and allocations to address the shortfall are some way off. Paragraph 72 of PPS3 advises that applications should not be refused solely on the grounds of prematurity. If there is less than a 5 year housing land supply and a site is shown to be suitable and sustainable there should be no reason to delay its development whilst DPDs are prepared.
19. The district wide/non-PUA argument is not new. But for the purposes of this appeal, whether considered on a district wide or non-PUA basis, it is clear that there is a significant and increasing shortfall in the 5 year housing land supply. Figures range from 4.25 years (the Council's October 2011 figure for non-PUA) to as low as 1.87 years (Pegasus Planning's figure for the district based on the June 2011 housing land assessment). Where there is less than a 5 years supply of deliverable sites, paragraph 71 of PPS3 falls to be applied. This approach is carried forward in the dNPPF and is consistent with the March 2011 Ministerial statement on Planning for Growth which expects local planning authorities to facilitate housing and '*take into account the need to maintain a flexible and responsive supply of land*'.
20. Current policy in PPS3 at paragraph 71 advises the favourable consideration of applications for housing where there is an absence of a 5 year housing land supply having regard to the requirements of paragraph 69. The Council's reasons for refusal refer also to paragraph 54. This deals with plan making and the identification of sufficient specific sites to deliver housing in the first 5 years. To be deliverable sites should be available, suitable and achievable. In that there is a willing landowner and developer, who is building on adjoining land, the appeal site is available and could deliver housing in the next 5 years. I now turn to consider whether it is suitable for housing in terms of the matters set out in paragraph 69.

The spatial vision for the area

21. Paragraph 69 requires that in determining applications regard is had to ensuring that development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.
22. Rothley is on the A6 transport choice corridor which links Leicester and Loughborough, one of the locations to which the Structure Plan had directed development. Work on the evidence base for the CS included the publication in September 2008 of the Council's Settlement Hierarchy Review, the aim of which was to identify those settlements which were sustainable and should be designated service centres and to establish the appropriate scale of development for them. In line with the Sustainable Community Strategy, it identified Rothley as having a good range of services and facilities, including a

- primary school, main convenience store, post office, a library and with good public transport accessibility. It also noted that most of the service centres had accommodated significant growth over the past 30 years and that continuing growth pressures had sometimes strained services.
23. Rothley is the smallest service centre in terms of population size. Local people and the Parish Council are concerned that its services and facilities are not able to cope with any more development. It has no doctors' surgery or opticians. I was told local shops and services have closed, despite the village having grown by 20% in the last 5 years; 149 new houses were already being built; and the primary school was at capacity, a matter I deal with below. However it is relevant that the 2008 Review did not propose any change to the hierarchy in respect of Rothley and a capacity study, undertaken by the Council in December 2011, continued to identify Rothley as a service centre. The preferred option, recommended in the 2008 Review, was for large scale greenfield housing allocations in the service centres where these could help address local issues provided there was adequate local facilities and infrastructure. In the case of Rothley, it seems to me that this would inevitably mean building outside the current LP limits to development.
24. Rothley and Mountsorrel Parish Councils set up a Joint Working Party in November 2010 to progress work on a neighbourhood plan with the aim to establish a suitable vision and strategy for the two villages and a '*bottom up housing strategy*'. However there was no evidence at the hearing as to how far that work had progressed, whether any housing sites had been identified and their size and location. At this early stage and in the absence of any information as to how such a plan might fit with the spatial strategy of the emerging district wide CS, it can be given little weight.
25. The LP is now of some age. Its strategy was based on the 1994 Structure Plan and not on the more recent EMRP. Work is progressing slowly on the new spatial strategy and the submission draft of the CS has been put back. Nonetheless from the background documents that have been produced it appears that further housing development at Rothley would not be inconsistent with the emerging spatial vision for the borough. Nor would it undermine any wider policy objectives for the area. In that the appeal scheme would be capable of achieving a wide choice of high quality homes, including 30% affordable, widening opportunities for home ownership and improving affordability across the housing market, including by increasing supply, it would be in line with the strategic housing policy objectives in PPS3. Further the DAS indicates that it has the potential to create a sustainable, inclusive and mixed community in a desirable rural area.

Quality and mix of housing

26. The application is in outline but the information provided indicates that the site could be laid out to achieve a high quality of housing and a good mix of accommodation. The DAS includes urban design principles influenced by PPS1 and PPS3. The illustrative layout indicates a net developable area of 5.11ha with areas of open space laid out within and around the site, substantial boundary planting and a permeable pedestrian and cycle network. The development would make efficient and effective use of the land at a density and of a scale and form that would be in keeping with the character of the village and surrounding development. The UU provides for 30% of the units to be provided as affordable housing with 75% for social rent and 25% as

intermediate housing units. It includes triggers for their delivery which is intended to be through a registered social landlord but provides alternative acceptable arrangements for the delivery of low cost homes if one does not come forward. The scheme would meet the objectives of EMRP policy 2 on promoting better design and LP policies ST/1iii), EV/1, EV/20, H/5, H/16 and RT/5 for good design, housing mix and density as well as the Council's SPDs on Leading in Design 2006 and Affordable Housing 2005. In terms of paragraph 69 of PPS3, it would achieve a high quality and good mix of housing.

Suitability of the site

27. The site is in a sustainable location within walking distances of the village shops, facilities and services. It is capable of being serviced and is accessible to buses on Hallfields Lane. The application was accompanied by a Flood Risk Assessment and the housing would not encroach onto the thin band of Flood Zone 2 by the northern boundary. The ground is generally impermeable and the scheme includes a balancing pond close to the access onto Hallfields Lane. There is localised flooding in Town Green, Town Green Street and along Hallfields Lane. However there is no evidence that this arises as a consequence of surface water run off from the appeal site or that the proposed measures to control surface water post development would not be effective. Subject to the imposition of appropriate conditions, the Environment Agency and Severn Trent Water are satisfied that development would not give rise to any flooding or drainage issues.
28. The application was accompanied by a Transport Assessment and Framework Travel Plan and includes proposed modifications to the signal controlled Red Lion junction and a ghost island junction in Hallfields Lane. Whilst queries were raised at the hearing about peak traffic flows and queue lengths at the junction, particularly if the former library site were to be redeveloped, the County Council as Highway Authority is satisfied that the amended improvements proposed would mitigate the impact of the development and would be satisfactory. The SOCG confirms that there are no outstanding issues between the main parties that could not be resolved by the imposition of appropriate conditions or legal obligations in respect of archaeology, ecology and biodiversity, residential amenity and traffic and highway safety. It was agreed at the hearing that any outstanding concerns about disturbance to an outlier badger sett and foraging bats were capable of being satisfactorily addressed by conditions, including controls over lighting within the site.

Supporting infrastructure and facilities

29. The UU provides for agreed developer contributions towards necessary infrastructure to serve the development. It would deliver new play and leisure facilities in association with the development and the upgrading and improvement of existing facilities as well as improved access to the waterside environment and a new crossing over the Brook. Provision would be made for improved gateways to the village, public art and community facilities.
30. Justification has been provided for each of the contributions sought and I am satisfied that the contributions towards community facilities, the pedestrian bridge, transport measures, highway contribution, open space, informal amenity area, informal sports area and their maintenance, and that of the balancing pond, meet the Community Infrastructure Levy Regulations 2010 (CIL) tests being necessary, directly related to, and fairly and reasonably

related in scale and kind to the development. They comply with the requirements of the Council's SPD on Developers' Contributions and fulfil the objectives of LP policies ST/3, H/5, TR/6, RT/3, RT/4, RT/5 and RT/12.

31. No objection was made by the Council to the obligations in relation to the transfer of land and I am satisfied from what I heard at the hearing that the UU is appropriately drafted so as not to create any obligation binding on the local planning authority.
32. The UU also provides for contributions towards health facilities and the police and for library and education contributions. There is no doctors' surgery in Rothley but evidence from the Primary Care Trust was that the monies would be used to provide additional consulting rooms at Alpine House in Mountsorrel to increase its capacity to serve new residents of Rothley. The library contribution would be used directly to improve facilities at the Rothley library. Both accord with the Council's SPD on S106 developer contributions and meet the CIL tests.
33. Police contributions have been accepted by Inspectors elsewhere in Leicestershire. However insufficient justification has been provided here on the need for and direct relevance of the contribution being sought to this development. The obligation therefore does not meet the first and second CIL tests and I am unable to take it into account in determining this appeal.

Primary school capacity

34. It was not disputed at the hearing that there is insufficient capacity at the primary school in Rothley to accommodate the demand that would be generated by the development and there would be no spare capacity in 2015 at either Mountsorrel or Cossington primary schools, both within 2 miles of the site. The UU provides for an education contribution, agreed with the County Council as Local Education Authority (LEA), *'for the purpose of providing extending improving or altering facilities or services at Rothley Church of England Primary School or such other schools as will provide additional accommodation that will provide capacity directly or indirectly to accommodate pupil growth from the development'*. The LEA provided a statement and attended the hearing and I am satisfied that the obligation meets the CIL tests and those in Circular 05/2005.
35. It was the LEA's view that because of physical site constraints at Rothley primary school, the additional capacity was likely to have to be provided at Cossington, subject to a feasibility study. However it was the appellants' evidence that not all possible options to enlarge the school at Rothley have been thoroughly explored and exhausted. Reference was made to the lack of objection by the Borough Council to an application made in July 2011 to add 4 classrooms. Although it was later withdrawn by the LEA, the scheme was clearly sufficiently advanced to be considered practicable. The provision of an artificial playing surface, which is treated as if it were twice its actual area, might also allow for the school to be enlarged and the LEA's concerns about flood risk and maintenance and possible objection from Sports England do not appear so far to have been seriously investigated. It would be reasonable to expect the feasibility study to consider these options in greater detail.
36. But in any event, if it were decided for whatever reason not to enlarge Rothley school and to provide capacity elsewhere, the assumption made by the

Borough Council that this would necessarily result in families living on the site having to make unsustainable car journeys of more than 2 miles to access primary school education is not supported by evidence and is inconsistent with the way school admissions are currently determined.

37. It would take time for the development to generate demand for places at the local school. The appeal site lies within the catchment area for Rothley primary school. Many of the current pupils do not live within the catchment area. If permission were to be granted for the development and the school were not enlarged, the effect would not be that children living on the site would have to go elsewhere to school but that those applying to attend Rothley from outside the catchment area would over time have progressively fewer places available to them. Catchment areas are not statutory but changes to their boundaries are not undertaken lightly. Looking longer term it seems it will not be where a child lives but parental choice that will determine school admissions.
38. For these reasons I do not accept that the consequences outlined by the Council in its decision are inevitable or supported by the evidence. Nor that they indicate that the development is unsustainable in this location and therefore inappropriate. Whilst I am satisfied that there is pressure on spaces across the local primary schools, this could be mitigated to the extent necessary to provide additional capacity by way of the UU education contribution which meets the CIL tests and accords with LP policy ST/3 and the Council's SPD.

Impact on landscape character

39. Rothley is located on the edge of the foothills and valleys associated with the Charnwood Forest which lies to the west with its immediate setting defined by the Rothley Brook valley. The park land of Rothley Park is to the west of the village with the Rothley Park Golf Course to the south west of the site. Agricultural land to the south forms part of the larger Rothley Temple Estate.
40. The site is located on the north west facing valley slope that falls from a high point of 70m AOD in the south east corner to approximately 50m AOD along the north west edge of the site by the Brook. Other than the large agricultural buildings around the farmhouse and the concrete yards and storage areas, the farmland has few features. These are generally restricted to the boundaries of the site and include hedges and riparian vegetation associated with the Brook. To the south the appeal site is defined by a distinct change in topographical level at around 62m AOD where the valley side steepens toward the southern ridgeline with just beneath the crest a line of mature trees, the relict remains of the 19th century ornamental drive known as Lord Macaulay's Walk.
41. The site falls at the boundary of two national landscape character areas – the Trent Valley Washlands and Charnwood – and on the eastern fringe of the county level Charnwood Forest character area, that to the east being within the Soar Valley. The local landscape setting of the Rothley Brook character area is described in the County Council's 2008 Landscape and Settlement Character Assessment as one of moderate condition and strength of character with a recommended landscape management strategy of enhancement. Whilst there is concern about sprawl this is in the context of coalescence with Mountsorrel to the north of the village and further development to the west along the Rothley Plain. There is no mention of the farmland to the south providing an open setting to the village and the 2008 Landscape Assessment refers to built

- development being '*a prominent feature*' and '*notable on rising valley slopes*' with woodland forming '*the background on higher and rising ground beyond*'.
42. Whilst these are broad landscape character areas, it is clear that development on the valley slopes would not introduce an uncharacteristic element into the landscape. The proposal would build upon the existing settlement of Rothley and would not result in the loss of any feature that is distinctive to the Rothley Brook character area. The site is close to the Rothley Conservation Area which was subject to recent appraisal in 2008. Both the Landscape and Settlement Character Assessment and the Rothley Conservation Area Character Appraisal refer to there being few views out from the village due to its enclosed character and lack of vantage points. There is no indication that the site forms part of a key view or vista either into or out of the Conservation Area. The boundary of the Conservation Area was reviewed but whilst an extension was proposed towards Rothley Park (subsequently designated as the Rothley Ridgeway Conservation Area) there was no suggestion that Brookfield Farm should be included because of its importance to the setting of the village.
43. The appeal application was accompanied by a green infrastructure strategy, a landscape management plan, a landscape masterplan and a series of detailed landscape sections. Although a landscape and visual appraisal was not provided with the application, one was prepared for the appeal in accord with professional guidance and an updated January 2012 landscape management strategy was produced at the hearing. I am satisfied that there is sufficient material to assess the landscape and visual impact of the proposed development along with what I saw on my visit to the site and area.
44. From the evidence it is clear that the development strategy was guided by a landscape and visually led approach that addressed the landscape constraints and which would be capable of delivering a robust green infrastructure strategy to mitigate any effects on visual amenity and landscape character. The strategy focuses the housing on the part of the site that is already developed and within the lower valley slopes so as to retain development within the main body of the landform and protect elevated views from the rights of way network and potential future footpaths. The replacement of the large farm buildings with housing would reduce the mass of built form near the road and there would be smaller individual elements with a higher degree of separation. With planting and green space within the development, there would be a softer and visually acceptable setting to Hallfields Lane and to the Conservation Area.
45. The scheme would secure and deliver a robust landscape setting to the development that would be consistent with the local character, respect the setting of the Conservation Area and views in the landscape towards the Parish Church, in combination with wider landscape enhancements to the land under the developer's control. The green infrastructure strategy includes a native tree belt of between 10-15m wide on the boundary of the residential development that would over time create a soft and more wooded appearance whilst retaining views through the development to the wider landscape and the village setting. It would be sufficient distance from the new houses to avoid later pressure for lopping or felling. New specimen tree planting in the '*blue land*' would extend the parkland character of Rothley Park and Lord Macaulay's Walk would be reinstated using semi-mature oak trees and opened up as part of an extended public rights of way network. Whilst the land would still be

fenced and farmed I do not consider that this would detract from the landscape character, the views or the experience of walking along the new paths.

46. Within the site there would be a central area of open space and parkland with links radiating out to the existing and new footpaths, including to a new footbridge over the Brook to the play area in Town Green. The meadows and floodplain by the Brook would be safeguarded and enhanced and through the provisions of the UU the proposed development would deliver a network of new links and green spaces that would enhance public use of the landscape and secure long term access, wildlife and ecological benefits; all of which weigh in favour of the scheme.
47. In terms of impact on landscape character, the proposal would not conflict with the management objective for the Charnwood landscape character area. Through the green infrastructure strategy it would help to secure a number of the guideline recommendations for the Rothley Brook character area by strengthening the riverside planting, enhancing the existing hedgerow network, as well as the extensive new areas of planting which over time would screen the extension to the village. The built development would be set down in the landform on the lower valley sides and within woodland planting, and would be closely associated with and no higher than the housing being built on the adjoining land, and the rooflines would not be uncharacteristically prominent.
48. In that the development would secure the delivery of new woodland areas along the urban fringe, extend and enhance the rights of way network by restoring historic links, improve permeability to the waterside and create circular walks that connect the settlement to the wider countryside, it would be consistent with the key characteristics of and fulfil many of the guideline recommendations for the Rothley Brook landscape character area. Nor would there be any conflict with recommendations for the settlement character area. I conclude that the proposal would be unlikely to have any significant adverse impacts on the intrinsic landscape character of the area in the short term with enhancement likely in the longer term as planting becomes established. As it accords with the objectives of LP policies ST/1, EV/1, EV/20, H/16 and RT/12.

Impact on visual amenity

49. Both the main parties identified a number of typical viewpoints in the landscape and village and made assessments as to the degree to which the site was visible from these locations and the effect of the proposed development. Time was spent at the hearing in assessing the photographic evidence, illustrative layout and cross sections and I visited the viewpoints.
50. From the west, public views of the site are restricted to the lane which leads to the golf club along bridleway J59. As the development would extend beyond the existing built form on the site, it would create a visible extension to the settlement and have an urbanising effect in the early years. However it would be seen at some distance, in the context of an established residential skyline and where the land is relatively low lying. The development would be limited to the lower valley slopes, below where the land rises up more sharply, and would only be likely to have a limited impact on ridgeline views. Corridor views towards the church tower would be maintained and in the longer term as the buffer planting matures, the development would be substantially screened. In the foreground, it is proposed to plant parkland trees which as they mature would frame the views towards the church and enhance the village setting.

There would be short term urbanising effects, however they would be offset by the opportunity offered by the scheme for longer term benefits that would enhance the landscape setting of these views.

51. From Town Green, within the Conservation Area, there are open views across the fields rising up towards Lord Macaulay's Walk and Black Hovel Spinney on the skyline. From these public viewpoints, the existing agricultural buildings and telecommunications mast are visible to one side. The new houses would extend beyond the existing built envelope but views of their roofs would be filtered by the vegetation alongside the Brook and the open views of the wider areas of pasture which are more central would remain unaffected. With the establishment and maturing of planting on and around the site, this would restrict views towards the development and reinforce the woodland character of the wider landscape. Tree planting on the ridgeline would also serve to further soften the roofscape and minimise any longer term visual impacts.
52. For the occupants of properties in Forge End, there would be a change in their outlook across the Brook to the site with the mass and height of the agricultural buildings being replaced by lower and more individual elements. The water meadows would remain open, planting is proposed along the boundary and there would be an acceptable separation distance.
53. When entering the village on higher ground from the west, there would only be glimpsed views of the appeal development which would be set below the ridgeline trees and I am not convinced that the roofs would break the skyline. The trees on top of the ridge would still be prominent, would be reinforced by additional planting and would continue to form the backdrop to the village.
54. Within the village there are restricted views of the north facing valley slopes from higher ground near the centre, from limited vantage points on Wellsic Lane, Howe Lane, North Street and Anthony Street. The Conservation Area Appraisal describes the townscape and streets as being narrow and tightly enclosed and this enclosure tends to contain and constrain any views out to the south. Also in those views the appeal site is seen in the context of the close village roofscape. Whilst the Council described the verdant green of the appeal site fields as '*effectively bleeding*' into the village, I found these views to be limited and channelled and the appeal development would replace views of the existing agricultural buildings. As the houses would be set below the ridgeline, the characteristic view of the trees on the skyline would remain. Any harshness of the new development in the early years would be mitigated in the longer term as the tree planting within and around the site matured.
55. In closer views from the lower lying area of the village within the Conservation Area to the north and east of the site, the vegetation along the river corridor and the existing buildings limit views into the site and of the wider landscape setting. Housing would replace the agricultural buildings and whilst there would be greater site coverage, extending beyond the existing barns to the west and up the slope to the south, the houses would have a more varied and less imposing roofline, volume and massing. They would also be seen in the context of new development to the east, behind the houses in Hallfields Lane. Again in the longer term further waterside planting and buffer planting would create a softer setting to the site than currently.
56. There are views from Hallfields Lane where the site is defined by the existing farm buildings and the frontage housing to the east. Development would be

set back from the road and with the water meadows remaining open would mirror the designated open area of special character downstream. Views of the site from the east are restricted by the lie of the land, the existing housing and the boundary vegetation to close views from public footpath J55 where development on the appeal site would not extend beyond that permitted on the eastern side of the path. These views are already characterised by development and from the upper section of the path there would still be views over the roofs to the historic village core and from the south east corner there would be a clear impression of walking down into the settlement. With the proposed extended network of public rights of way, the experience of walking out of and around the village and the ability to appreciate its valley setting from previously private land would be considerably enhanced.

57. The development would be laid out as a cul de sac off the main road. However unlike the Council I do not see this as inherently objectionable and it would be no different to the new housing already permitted. With the proposed footbridge over the Brook and footpath links, residents would have alternative connections to the village and to the surrounding countryside. Lighting within the site would be visible from certain places around the village. However since I have already concluded that this could be controlled by condition to ensure that it would not harm any protected species, similar considerations would apply in respect of visual amenity concerns.
58. The proposed development would displace existing development in the form of large functional agricultural buildings. Whilst it was argued that these bring the farm into the village and contribute to its rural setting, none of the assessments or appraisals mentions the farm buildings in that context. The new housing would be consistent with that being built nearby, would be visually more permeable and in urban design terms offer a better structure and form, particularly along the Hallfields Lane frontage, as well as ensuring that the wider landscape would extend through the development.
59. Whilst there are a number of views towards the site, within which certain elements of the development would be visible to varying degrees, the impacts have been addressed in the landscape strategy. Where there would be short term impacts, visual mitigation is proposed to ensure that in the long term they would be screened or softened. Contrary to the Council's view, I conclude that over time the proposed development would not appear unduly visually prominent or intrusive and would not significantly harm the rural character and the surrounding countryside. Thus there would be no material conflict with the objectives of national policy or of LP policies ST/1, CT/1 and CT/2.

Effect on the Conservation Area

60. The Council also objected to the development's impact on the character and appearance of the Rothley Conservation Area and its third reason for refusal states that the development fails to preserve or enhance its setting by virtue of having a '*substantially significant detrimental effect on the character and appearance of that area when viewed from the slope north of Rothley Brook and moderately significant when viewed from Town Green Street*'.
61. LP policy ST/1 part (ii) particularly refers to measures being taken to '*conserve, protect and enhance those features of the natural, historic and built environment which are particularly valued by the community....*'. Whilst it was very apparent at the hearing that the Conservation Area and its setting is

particularly valued by local people, that does not mean that any new development of itself is unacceptable and should be resisted without first assessing what that impact might be.

62. National policy guidance on the historic environment is contained in PPS5. Conservation Areas are designated heritage assets and 'setting' is defined in Annex 2. Policy HE10 sets out additional policy principles guiding the consideration of applications for development affecting the setting of a designated heritage asset and '*those that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset*' should be treated favourably. Where this is not the case, any harm should be weighed against the wider benefits of the application. Local planning authorities are asked to identify opportunities for changes in the setting to enhance or better reveal the significance of a heritage asset and these should be seen as a public benefit and part of place shaping. There is English Heritage Practice Guide on the setting of heritage assets, issued in November 2011, which sets out key principles in assessing significance and the effect of development.
63. The Rothley Conservation Area was designated in 1972, extended in 1997 and the character appraisal was adopted in 2008. It is reasonable to rely on that appraisal, together with the Charnwood Forest Landscape and Settlement Character Assessment, as the appropriate documents that identify and assess the significance of the heritage asset and are the basis for analysing the relationship between significance and setting.
64. Whilst the Council described the appeal site as being important to the Conservation Area as a working farm in the centre of the village, it is not recognised in the character appraisal as contributing to its significance which is defined principally in terms of streetscape character and architectural quality and variety. The contribution of landscape setting only relates to the location of the village beside the Brook, views of the church tower and the open aspect and silhouette when viewed from the south. There is no comment on the nature of the significance to the heritage values of the asset of the village's location by the Brook and the Brook is defined in relation to its ecological and bio-diversity value and not to any historical or landscape significance.
65. The church is a key landmark building. When viewed from the south across the developed site it would remain prominent and its dominance and setting on the eastern side of the village would be unaffected by the development. Similarly Rothley's characteristic townscape setting would not be affected by the development and there would be no harm to the architectural, historic or aesthetic values of its buildings. When viewed from the south, there would be no impact on the silhouette of the village. Replacing the large agricultural buildings by new housing would give the view from the south a more open aspect. The new houses would be lower, with 3 storey development limited to key focal locations, and the roofs would not project above the crest of the downward slope. In that regard, there would be some enhancement of the view from the southern slopes, in accord with policy HE10 of PPS5.
66. The Council's decision refers to harm when seen from two particular places within the Conservation Area; from the north slope of Rothley Brook and from Town Green Street. The landscape and visual impact from these locations is considered above. There is existing and proposed planting beside the Brook. Limited and glimpsed views are afforded to the landscape from further up the

north slope. The scheme has been designed with areas of open space to break up the built form to allow views and vistas through the development and create sight lines to the surrounding land. The soft edge of development that characterises the relationship of the village to the Brook would be maintained and the development would not substantially harm the setting of the Conservation Area when viewed from the slope north of Rothley Brook and would preserve its character and appearance.

67. From Town Green Street views across to the development site are filtered by vegetation along the line of the Brook and the pasture land. The buildings of Brookfield Farm are partially visible and the development would change the nature of the views in that it would extend further to the south and west but would have greater permeability. When viewed from Town Green and further to the west, where there is a more open aspect, the development would be more prominent and would change the nature of the existing conditions. But with the landscaping proposals providing a soft edge to the development and the retention of the visual separation between the appeal site and views of the church, I consider that there would be less than substantial harm to the setting of any heritage asset and a neutral impact on the character and appearance of the Conservation Area.
68. In terms of PPS5, where less than substantial harm might occur, the test in policies HE9 and HE10 is to weigh that harm against any wider benefits claimed for the application. Whilst the Conservation Area character appraisal does not mention the appeal site, the proposals to restore a parkland character to the land to the south and replant Lord Macaulay's Walk would help define and better reveal the significance of the setting of the Conservation Area and its historic value. Enhanced access as a result of the new links within the development and the creation of new rights of way would allow the public to have a greater appreciation of the surrounding countryside and the landscape setting of the village and enhance its community value. The potential to manage and restore the ecological and bio-diversity values of the Rothley Brook would contribute to a feature recognised as being of significance to the Conservation Area.
69. I conclude that the limited harm to the heritage asset that might result from elements of the development would be significantly outweighed by the substantial benefits that would arise on implementation of the green infrastructure strategy. As such I find no material conflict with PPS5 or with LP policies ST/1 ii) or CT/2.

The landscape management plan

70. In assessing the landscape and visual impact and the effect on the setting of the Conservation Area, reliance has been placed on and weight given to the proposals in the green infrastructure strategy and their effective implementation through the landscape management strategy and the provisions of the UU into an agreed long term landscape management plan. Although I am satisfied that the updated January 2012 strategy provides a sound basis for the appropriate management of both the appeal site and the adjoining land, the Council had concerns about the deliverability of certain elements of the strategy, particularly on the land edged blue which the Council originally hoped would be transferred to public ownership. In particular whilst the UU commits the owner to submit and implement the landscape

management plan, it only provides the Council with two opportunities to agree to the plan before referral to an independent expert.

71. Given the weight attached by the appellants to the landscape management strategy, and particularly to the benefits of the off site planting and access proposals, it is important that there is confidence that these matters would be delivered in a timely and appropriate manner. At the hearing the main parties agreed the use of conditions to secure a staged approach to the plan's delivery. These would provide first for the approval of the landscape management strategy, then the drawing up and approval of separate landscape management plans for both the appeal site and the land edged blue, in accord with the approved strategy, and their full implementation in accord with an agreed timetable, with a regular review mechanism and provision for long term management and maintenance. On that basis, I consider that there can be confidence that the scheme would deliver the long term benefits relied upon and that it is reasonable and appropriate to give considerable weight to the proposed mitigation measures.

Overall conclusions

72. There are longstanding countryside policy objections to the release of this site which lies outside the LP planned limits of development. However there is an acknowledged shortfall in the 5 year housing land supply as a result of low delivery rates against the EMRP housing numbers. In the absence of a recent LP or up to date spatial strategy, the Council acknowledged that it was under pressure to take development control decisions to release sites for housing to address the shortfall. In these circumstances it is Government policy that favourable consideration should be given to planning applications for housing, subject to the policies in PPS3 and the considerations in paragraph 69.
73. The appeal scheme would use the land efficiently and effectively, to achieve high quality housing and a good mix of market and affordable homes. Whilst it might look rather raw in the early years, the establishment of major structural planting around and within the development would ensure its landscape and visual impact would be acceptable. The scheme would bring additional wider benefits to the landscape, heritage assets and the public, through the restoration and enhancement of the surrounding land, the re-establishment of a parkland setting to the south side of the village along with the reinstatement and creation of new countryside access routes along Lord Macaulay's Walk and across the Brook. These benefits outweigh any harm to the setting of the Conservation Area.
74. The provision of additional housing on the appeal site would not harm or undermine the spatial strategy of the emerging CS. Rothley is identified as a service centre in the settlement hierarchy; the site is available, suitable for housing now and is achievable; and the scheme would not result in unsustainable development. To delay addressing the housing shortfall, pending the publication of the submission draft CS and later site allocations DPD, would risk the shortfall worsening and would not reflect the Government's key housing objective to increase significantly the delivery of new homes. Taking all these factors into consideration, I find that the balance weighs in favour of the grant of permission.

Conditions

75. Draft conditions were discussed at the hearing. I have considered them having regard to the advice in Circular 11/95. To ensure a satisfactory form of development on the site in broad accord with the DAS it is reasonable to impose conditions to require the submission and approval of a Master Plan and detailed Design Code for the development. The Council had sought a shorter time period of one year for submission of reserved matters but this would have unreasonably pressed on the preparation, prior submission and approval of a Master Plan and Design Code. The Master Plan and Design Code will address car parking and street types and materials and there is no need for the Highway Authority's condition requiring compliance with its design standards. Building heights can be covered by a simple reference in the DAS details.
76. For the reasons given above, conditions are needed to ensure that the landscape management strategy is agreed and to secure the submission, implementation and review of landscape management plans for the appeal site and the adjoining land.
77. Conditions requiring the submission of final ground and floor levels, hedge retention and protection, and public art are all reasonable and necessary to ensure a high standard of development. Given the history of the area it is relevant to require a programme of archaeological investigation to be carried out. As ground under the farmyard could be contaminated, a phase II ground investigation is necessary.
78. In the interests of highway safety, a condition is needed to secure the construction of the access onto Hallfields Lane with appropriate visibility splays. Grampian type conditions are required to ensure that the off site highway works are completed before the dwellings are occupied. The details of the surface water drainage have been agreed and conditions are required to secure their implementation and to agree the foul drainage. There is no need for a condition to require the surfacing of the public footpath as it was conditioned on the permission for Phase I. In accord with guidance in PPG13 the developer should provide a green travel plan and car parking management strategy for the site. In line with the Climate Change supplement to PPS1 and EMRP policy 2 at least 10% of the energy supply should be from decentralised and renewable or low carbon energy sources.
79. Given the size of the site it is reasonable to require the submission and agreement of a formal Construction Method Statement that also includes the routing of construction traffic, hours of working, the control of surface water run off during the construction works and the protection of the Rothley Brook.
80. Subsequent to the ecological survey, evidence was found on site of an outlier badger sett. There is specific protection of badgers under the Protection of Badgers Act 1992 and a licence from Natural England would need to be in place prior to any works on site. Given that control, it will be for the developer to ensure that full regard is had to the badgers in both the design and implementation of the scheme and there is no need for a condition to require further survey work. I have amended the wording of some conditions to reflect that of the Model Conditions annexed to Circular 11/95.

Final conclusion

81. I have taken into account all other matters raised, including the views of local residents and other interested parties, in reaching this decision. However I find none to be of such weight as to override my conclusions, for the reasons given above, that the appeal should be allowed.

Mary O'Rourke

Inspector

APPEARANCES

FOR THE APPELLANTS:

Nigel Harris	Pegasus Planning Group
Jonathan Golby BA Hons Dip LA MA CMLI	Pegasus Environmental
Guy Longley	Pegasus Planning
Andrew Harris BA MPhil AIFA	URS Scott Wilson
Stephen Clyne LCP (Dip SMS) Cert Ed MAE	EFM Ltd
Paul Hunt	Harvey Ingram LLP
Nigel Hainsworth	Charles Church North Midlands
Andrew Bamber	Mather Jamie Ltd (agent to the Rothley Temple Estate)

FOR THE LOCAL PLANNING AUTHORITY:

Neil Thompson	Principal Planning Officer
Sally Eden	Landscape Officer
Richard Thurling	Solicitor to the Council
Mark Fennell	Conservation and Design Officer
Clare Clarke	Principal Planning Officer (Policy)

FOR LEICESTERSHIRE COUNTY COUNCIL:

John Prendergrast	Principal Solicitor
Andrew Tyrer BA (Hons) MSocSci MRTPI	Developer Contributions Officer

FOR ROTHLEY PARISH COUNCIL:

Percy Hartshorn	Chairman
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FOR KEEP ROTHLEY RURAL:

Jim Beadman	Local resident
Jonathan Weekes	Landmark Planning

Councillor Diane Wise, the local member, spoke at the hearing as well as many local residents.

DOCUMENTS HANDED IN AT THE HEARING

- 1 Two letters of objection sent to the Council
- 2 Extracts from the East Midlands Regional Plan March 2009
- 3 Charnwood Development Framework Supplementary Planning Document
Section 106 Developer Contributions May 2007
- 4 Consultation response from NHS Leicestershire County and Rutland on
developer contribution
- 5 Extracts from the Blue Book on mitigation submitted by Mr Golby
- 6 Additional Figures 19, 20 and 21 submitted by Mr Golby
Figure 19 – Settlement Context

- Figure 20 – Land Use (Existing)
- Figure 21 – Land Use (Proposed)
- 7 Keep Rothley Rural flyer
- 8 Note from Mr Hunt on the Section 106 deed of undertaking
- 9 Appellant's skeleton costs application
- 10 Hard copies of emails handed in by Mr Hunt in support of the appellant's costs application
- 11 Council's costs rebuttal
- 12 Landscape Management Strategy January 2012

PLANS

- A Application drawings:
 - EMS.2054.01.D Location Plan (with red and blue lines)
 - EMS.2054_09-5C Illustrative Layout
 - EMS.2054_10-1B Context Plan
 - 5338 OGL Topographical Survey
- B Highway improvements:
 - Drawing No. A061393/35/18/003B (Red Lion signal controlled junction)
 - Drawing No. A061393/35/18/007A (proposed site access)
- C Landscape Masterplan EMS.2054_15 (to replace Figure 15 of Mr Golby's Appendices)

Schedule of Conditions (24 in total)

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans listed in PLANS schedules A and B.
- 5) The submission of the reserved matters application(s) shall broadly accord with the details shown in the Design and Access Statement (August 2010) and its Addendum (February 2011), the Green Infrastructure Strategy (December 2010) and the Illustrative Layout EMS.2054_09-05C.
- 6) No development shall take place until both a Master Plan and a Design Code for the site have been submitted to and approved in writing by the local planning authority. Both shall substantially accord with the Design and Access Statement and its Addendum. Any amendment to either shall be submitted to and approved in writing by the local planning authority. The Design Code shall address the following:-

- Architectural and sustainable construction principles
- Character areas
- Lifetime home standards
- Car parking principles
- Cycling provision including pedestrian and cycling links to adjoining land
- Street types and street materials
- Boundary treatment
- Building heights as indicated in the Design and Access Statement page 51
- Building materials
- Provision of public open spaces (including timetable for implementation and availability for public use)
- Design of the site to accord with Secure By Design principles

Applications for the approval of the reserved matters shall be in accordance with the Master Plan and Design Code as approved.

- 7) No development shall take place until a Landscape Management Strategy for the areas edged red and blue on drawing no EMS.2054.01.D has been submitted to and has been agreed in writing by the local planning authority.
- 8) Prior to the occupation of the first dwelling, Landscape Management Plans for the areas edged red and blue shall be drawn up in accord with the approved Landscape Management Strategy and shall be submitted to and approved in writing by the local planning authority. The Landscape Management Plans shall address the following:-
 - Long term design objectives
 - Details of all trees and hedges to be retained and measures for their protection during the construction works
 - Details of services to be provided above and below ground
 - Landscaping schemes for the areas edged red and blue
 - Full planting specifications
 - The boundary treatment to all open areas including design, height, materials and colour finish
 - The layout and design of the children's play area, the kickabout area and any other natural play area and open space within the development
 - The treatment of all hard surfaced areas, including the types and colours of materials, street furniture and signage
 - Details of external lighting
 - Management responsibilities and maintenance schedules for all the landscape areas within the areas edged red and blue (other than small, privately owned, domestic gardens)
 - A timetable for implementation
 - A regular review mechanism

The approved Landscape Management Plans shall be implemented and reviewed in accordance with the approved details.

- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 10) No development shall take place until the details have been submitted to and approved in writing by the local planning authority of proposed ground levels and finished floor levels of all buildings.
- 11) The hedge located along the eastern boundary of the application site shall be retained and maintained at a height no lower than 3 metres. Any part of the hedge which is removed, dying, severely damaged or becoming seriously diseased shall be replaced with hedge plants of such size and species as previously agreed in writing by the local planning authority, within one year of the date of any such loss.
- 12) No development shall take place until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been previously submitted to and agreed in writing by the local planning authority, and no development shall take place except in accordance with the approved details.
- 13) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - i) a timetable for its implementation, and
 - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 14) No development shall take place until details of the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is brought into use.
- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. a scheme for the on-site management of surface water run-off generated during the construction phase including the treatment and removal of suspended solids
 - ii. the protection of the Rothley Brook corridor

- iii. the routing of construction traffic
 - iv. the times of construction work which shall not take place outside 08.00 hours to 19.00 hours Mondays to Fridays and 08.30 hours to 13.00 hours on Saturdays and not at any time on Sundays and Public Holidays
 - v. the parking of vehicles of site operatives and visitors
 - vi. loading and unloading of plant and materials
 - vii. storage of plant and materials used in constructing the development
 - viii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - ix. wheel washing facilities
 - x. measures to control the emission of dust and dirt during construction
 - xi. a scheme for recycling/disposing of waste resulting from demolition and construction works
 - xii. measures to protect the hedge located along the eastern boundary of the application site during the duration of the construction works.
- 16) No development shall take place until a Phase II ground investigation has been undertaken to establish the full nature and extent of any contamination of the site and the results of the investigation together with details of any remediation strategy necessary to render the site safe shall be submitted to the local planning authority for their assessment and written approval. Any remediation work required by the approved strategy shall be carried out prior to the occupation of the first dwelling.
- 17) No development shall take place until a scheme to install trapped gullies, for areas of hardstanding where it is proposed to park five or more vehicles, has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.
- 18) No dwelling hereby permitted shall be occupied until the ghost island junction, as indicated on drawing number A061393/35/18/007 Revision A, has been constructed and made available for use.
- 19) No more than 30 dwellings shall be occupied on the site until the modifications to the signal controlled junction of Hallfields Lane/Loughborough Road/Cossington Lane, shown for illustrative purposes on drawing numbered A061393/35/18/003 Revision B, have been completed and are operational.
- 20) Development shall not begin until details of the junction between the proposed site access and Hallfields Lane have been submitted to and approved in writing by the local planning authority and that junction has been constructed in accordance with the approved details. These details are to include visibility splays of 2.4 metres by 59 metres.
- 21) No structure or erection exceeding 0.6 metres in height above ground level shall be placed within the sight lines referred to in Condition 20.
- 22) No part of the development hereby approved shall be occupied until details of a Green Travel Plan containing a travel to work, car use and car parking management strategy for the site as a whole has been submitted to and agreed in writing by the local planning authority. The plan shall make provision for relevant surveys, review and monitoring mechanisms, targets, timescales, phasing programmes and on-site management

responsibilities. It shall be implemented and subject to regular review in accordance with the above approved details.

- 23) No dwelling shall be occupied until a scheme of public art within the built fabric of the development, including its future management and a timetable for its implementation, has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be fully implemented in accordance with the agreed timetable.
- 24) Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.

END



Costs Decision

Hearing held on 8 and 9 February 2012

Site visit made on 9 February 2012

by M T O'Rourke BA (Hons) DipTP MRTPI

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

Decision date: 20 March 2012

Costs application in relation to Appeal Ref: APP/X2410/A/11/2161715 Land at Brookfield Farm, Hallfields Lane, Rothley LE7 7NF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rothley Temple Estates Ltd and Charles Church North Midlands for a partial award of costs against Charnwood Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development of land with associated access, landscaping and open space.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Rothley Temple Estates Ltd and Charles Church North Midlands

2. The costs application was submitted in writing (Documents 9 and 10). A partial award is sought for the expense in engaging the services of an education expert to prepare evidence and appear at the hearing to refute the Borough Council's (BC) second reason for refusal. This was unnecessary because there is a legal obligation to accommodate children in local schools and the children in question can be accommodated by the payment of a contribution towards the extension of schools that can reasonably be expected to serve the development. Having originally sought a contribution, this offer was then withdrawn by the County Council (CC) but subsequently a developers' contribution has been agreed and is provided for in the Unilateral Undertaking.
3. Additional points were made orally to the effect that the BC's behaviour in imposing the reason for refusal and then in persisting with it to the hearing was unreasonable. The BC had chosen to rely on the CC's second consultation reply of February 2011 but that did not recommend that permission be refused. From email exchanges in January this year, it became clear that the BC was seeking to rely on the CC to support its reason for refusal when in fact the CC was content to accept that if a contribution were made it would be able to address the need, whether at Rothley or any other school.
4. The reason for refusal is vague, incomplete and imprecise. It says residents would need to travel over 2 miles to access essential primary school education but does not say where to and the BC has provided nothing subsequently. It could have asked questions of the CC. Despite it now being known that it is likely the money would be spent at Cossington the BC has continued to maintain its objection. It has produced no evidence to show that the schools at

Mountsorrel or Cossington, both within 2 miles of the site, are unacceptable to serve the development in travel or sustainability terms other than to ask the Inspector to make the journey.

5. The reason for refusal does not mention walking distances and PPG13 and they are not mentioned in the Council's statement. The first mention of PPG13 was in a BC email to PINS on 30 January and in the response to the costs application. It is not a criticism of the scheme, rather of the CC and BC that they are unable to come up with a sensible programme to spend the S106 money that does not increase the travel distance to school. Conditions and S106 contributions have to be justified. That can only be if the money is used for the purpose asked for.
6. Substantive evidence has been produced by the appellants to show that the BC's stance is untenable both in respect of the LEA's admissions policy and the scope for extension at Rothley. Unreasonable behaviour has been demonstrated in terms of B16, B17 and B18 of the Circular. As the reason for refusal was substandard, all the costs of the education witness are sought.

The response by Charnwood Borough Council

7. This was also made in writing (Document 11) and the following oral observations were made. It was not unreasonable for the BC to rely on the CC's second consultation response. That response said Rothley primary school could not be extended and there was not sufficient capacity at either Mountsorrel or Cossington. No contribution was sought and it was a reasonable inference that was because it could not be spent. It was the first time the CC had responded to the BC in such terms and the BC had reasonably interpreted it as an objection.
8. The BC properly took into account the CC's advice and applied it to the principles of national policy and sustainability. The reason for refusal did not say where the children would go to school precisely because it was not known other than it could not be Rothley and unlikely to be Cossington or Mountsorrel. The CC provided greater detail to the appellant in its statement of 26 January 2012. Its view is still that Rothley school cannot be extended. The appellants disagree. The CC is best placed to know whether or not a school can take additional pupils. The CC has agreed an education contribution because otherwise if permission was given on appeal it would have nothing.
9. The second reason for refusal is linked to sustainability. When the CC changed its stance, it was reconsidered but still found to be valid. The situation is still that the local school does not have capacity and cannot be extended such that all but 5 children would have to be schooled elsewhere and travel more than 2 miles. The CC's submission and the PPG13 advice on sustainable walking distances provide a respectable basis for the BC's stance (B16). PPG13 is referred to in the SOCG. Circular paragraph B18 is irrelevant. The application of costs largely relies on the difference of opinion between Mr Clyne and the CC as to whether Rothley school can be extended. In accepting the CC's position, the BC has not acted unreasonably. If costs are awarded it should be limited to those incurred after 26 January 2012 when the CC provided further detailed submissions.

Reasons

10. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
11. Paragraph B23 advises that planning authorities are expected to give thorough consideration to advice they received from statutory consultees; that it is the primary responsibility of the planning authority to either accept or reject that advice; that they should clearly understand the basis for doing so; and should provide, where necessary, a clear and rational explanation of the position taken. Paragraph B24 refers to early discussion with the consultee and that what matters in any subsequent costs application is whether the authority can show good reason for accepting, or rejecting, the consultee's advice.
12. The BC took the February 2011 consultation response from the CC, which said that Rothley, Mountsorrel and Cossington schools did not have capacity, at face value. It did not ask questions as to what that meant in terms of the CC's responsibilities as education authority and whether it really meant that it would be the primary age children from the new development at Rothley who would be displaced and have to travel out of the village to school. Nor does it seem that the subsequent application that was made to extend the school, and then withdrawn, prompt any reconsideration of the second reason for refusal.
13. The reason for refusal is incomplete and lacks precision. It refers in the third sentence to families having to rely heavily on private transport to attend primary education and then in the last sentence to the potential impact on future residents who would need to travel over two miles to access essential primary school education. However it does not give any specific explanation as to why that would be the case nor does it refer to any national or local policy dealing with infrastructure, travel distances, etc.
14. It is clear from the BC's statement (paragraph 5.4(ii)) that the BC were seeking to rely almost exclusively on the CC to provide the evidence to justify its second reason for refusal which, when the CC agreed S106 terms, left it unsupported. The BC referred at the hearing to the PPG13 reference to walking distances of under 2 kilometres. That advice is in the context of offering the greatest potential to replace short car trips. Yet PPG13 is not referred to in the reason for refusal or in the BC's hearing statement and appeared to be an after thought.
15. At the hearing the BC failed to provide a clear and rational explanation of the position it was taking. In the event Mr Clyne's detailed evidence to the hearing on the statutory responsibilities of the education authority, on current admissions policy, catchment areas and numbers of out of catchment pupils at Rothley school, demonstrated that the outcome identified in the reason for refusal, that children from the development would have to go to primary schools some distance away, was unlikely to happen. The BC would have also known all that if it had sought earlier to clearly understand the CC's position.
16. When the CC's agreement to a developer's contribution became known late in January 2012, the BC had the opportunity to reconsider the second reason for refusal and determined to continue to defend it. To avoid a risk of costs, evidence should be produced at appeal stage to substantiate each reason for

refusal with reference to the development plan and all other material considerations. I do not consider that the evidence produced by the BC, both in its statement and at the hearing, went anywhere near providing a respectable basis for its stance on this matter.

17. Accordingly I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified. I am not limiting the costs to those of Mr Clyne's appearance at the hearing as the BC's behaviour before was unreasonable in terms of its failure to critically examine the CC's consultation advice (B23) and in its vague drafting of the reason for refusal (B16).

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Charnwood Borough Council shall pay to Rothley Temple Estates and Charles Church North Midlands, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing the education evidence.
19. The applicant is now invited to submit to Charnwood Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Mary O'Rourke

Inspector