



Appeal Decision

Hearing held on 23 April 2013

Site visit made on 23 April 2013

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Decision date: 17 May 2013

Appeal Ref: APP/K2420/A/12/2188915

Land at Shilton Road, Barwell, Leicestershire LE9 8HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by David Wilson Homes East Midlands against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref:12/00452/FUL, dated 1 June 2012, was refused by notice dated 26 September 2012.
 - The development proposed is the erection of 24 dwellings and associated infrastructure.
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Preliminaries

1. A Statement of Common Ground was agreed between the principal parties and submitted at the hearing¹. It sets out details of the appeal proposal, a description of the appeal site and its surroundings, and the relevant planning policies, together with matters of agreement and matters of dispute. It also includes a list of draft conditions, and 4 appendices.
2. An obligation made under section 106 of the above Act, in the form of a Planning Agreement dated 23 April 2013, was also submitted at the hearing². The Agreement is made between the owners of the land, the prospective developer (the appellant), the Hinckley and Bosworth Borough Council and the Leicestershire County Council. Amongst other matters, it makes provision for the delivery of 5 affordable houses, the laying out of public open space, and the payment of a number of contributions for/to: the maintenance of public open space (£55,368), the West Leicestershire Clinical Commissioning Group (£13,922), the Leicestershire Constabulary (£11,125), civic amenities (£1,176), libraries (£1,540), bus passes (£16,250), bus stops (£6,526), bus display (£240), and travel packs (£1,321).
3. I have taken account of the contents of both documents in the determination of this appeal.
4. At the hearing a request was made on behalf of the council for the case to be adjourned until a public inquiry could be held. The request was founded on the complexity of the issues associated with the 5 year supply of housing land and the desirability of cross-examination. The council also drew attention to an outstanding High Court challenge concerned, amongst other matters, with the appropriate methodology for calculating the housing land requirement. The

¹ Document 3

² Document 4

appellant argued the case was entirely suitable for consideration by means of a hearing. Having heard the representations from the principal parties, I considered that little would be gained by deferring the matter, and that it would be unacceptable to have to wait until the challenge was decided. I concluded the case was suitable for determination by means of a hearing.

Decision

5. The appeal is dismissed.

Main Issues

6. At the application stage the proposal was refused planning permission as a result of the appeal site's location outside the relevant settlement boundary and within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge, and because of the loss of an area of species rich grassland. During the processing of the appeal the principal parties came to an agreement however in relation to the latter matter. This involves the relocation of the grassland within the site, and the council dropped its objection to the scheme on these grounds.
7. On the basis of the submitted evidence and my own visit to the site and its surroundings, I consider there are two main issues in this case. These are:
 - whether a 5 year supply of deliverable housing land is locally available; and
 - the impact of the proposed development on the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge.

Reasons

Five year housing land supply

8. The purpose of paragraph 47 of the *National Planning Policy Framework* (the Framework) is to significantly boost the supply of housing. To this end it includes a number of provisions. Amongst these is the need to identify and update a supply of specific deliverable sites sufficient to provide 5 years worth of housing, as measured against the objectively assessed housing requirement.
9. Table 1 of the council's *Core Strategy* records that the requirement for the council's area is 9000 dwellings between 2006 and 2026 – equivalent to 450 houses per year. However, between 2006 and 2012 this has been achieved in only one year – 2008/9 when 474 houses were built. In other years the building rate varied between 227 (2010/11) and 438 (2006/7). There is no dispute between the principal parties that the building rate has not kept pace with the planned requirement – to the extent of 526 units.
10. The parties are in dispute however over the most appropriate method for overcoming this undersupply. The appellant cites paragraph 47 of the Framework and argues the shortfall should be made-up as rapidly as possible, by adding the 526 units to the current 5 year requirement of 2,250 dwellings (450 x 5)³. The council argues that, taking account of the specific local circumstances (including the approach adopted by the Inspector's Report following the examination of the Core Strategy), it is more appropriate to

³ The Sedgefield method

spread the shortfall across the rest of the plan period⁴. The appellant's approach results in a current 5 year requirement of 2,776 dwellings, while the council's results in 2,445 dwellings.

11. The Framework expresses no preference for a particular methodology and the parties have drawn my attention to the alternatives adopted by my colleagues at two recent appeals. At a case in Stanton under Bardon for 28 dwellings, my colleague favoured the Sedgefield approach following the change of circumstances since 2009⁵. He argued it would both attempt to meet the shortfall earlier in the plan period, and be more consistent with the Framework. At a case in Groby for 91 dwellings, another colleague favoured the Liverpool approach and concluded a 5 years supply of housing land was deliverable⁶. I understand this decision is the subject of a challenge in the High Court by the prospective developer.
12. The Framework is silent on the relative merits of the two approaches, but, amongst other matters, it is recognised in paragraph 154 that local plans should be aspirational but realistic. I see little purpose in aspiring to a target which might be considered to be unrealistic in the current economic climate. Although I do not dispute that the building rate over the past few years has been disappointing, this cannot be attributed in its entirety to the council's management of the housing land supply.
13. The downturn in the economy since 2008 has been long and deep, and in my view it is more realistic to anticipate a slow and steady recovery over a protracted period. I do not believe that recalculating the requirement to the extent proposed would of necessity contribute to the boost sought by paragraph 47, and in this respect I disagree with my colleague at Stanton under Barton. It is on this basis that I prefer the council's more cautious adoption of the Liverpool method for the calculation of the requirement.
14. In addition to identifying the requirement, paragraph 47 of the Framework also requires that this should be increased by either a 5% or a 20% buffer. The purpose of both is to ensure choice and competition in the market for land, but the additional purpose of the latter figure is to provide a realistic prospect of achieving the planned supply. It should be applied where there is a record of persistent under delivery of land for housing. The parties differ on this matter – the council favours a 5% addition; the appellant favours a 20% addition.
15. As I have recorded above, the rate of house building cannot be considered to be entirely the result of decisions made by the council. It is possible that increasing the buffer by 20% would increase the potential for achieving the planned supply of housing land in a buoyant economy, but I do not believe it would be a realistic prospect at present. In addition, I do not consider there to be any evidence that the council has been obstinate in relation to the under-delivery of housing, and I do not believe the persistence referred to in paragraph 47 has been demonstrated. On the contrary, the lower level of completions between 2009/10 and 2011/12 (353, 227 and 373) corresponds with the most severe period of the recession. I conclude that the addition of the lower buffer is appropriate in this case. It follows that, in preference to the

⁴ The Liverpool method

⁵ APP/K2420/12/2180699, paragraph 9

⁶ APP/K2420/12/2181080, paragraph 11

appellant's suggestion of 3,331, I favour the council's total 5 year requirement at 1 October 2012 of 2,565 dwellings.

16. The differences between the parties are less in relation to the supply of housing land. The appellant estimates that 2,548 dwellings are deliverable within the terms of footnote 11 to paragraph 47 of the Framework, while the council's estimate is 2,757. The appellant has referred to a number of specific sites where it is considered dwellings are unlikely to come forward as predicted by the council. Amongst other reasons, the appellant refers to the current depressed state of the housing market – the same reason I have favoured the Liverpool method and the 5% buffer. Although the appellant's pessimism may be justified, and its estimate accepted in its entirety, the supply would be only marginally less than the requirement.
17. I have taken account in this regard that the *Site Allocations and Generic Development Control Policies DPD* is available only in draft form. On the other hand, significant progress has been made with the *Earl Shilton & Barwell Area Action Plan*. This identifies a substantial area to the west of Barwell sufficient for approximately 2,500 dwellings. Although available only as a consultation draft, I understand the proposal is being actively pursued by means of an outline application. The consultation draft indicates a substantial commitment by the council, and notwithstanding the need for a section 106 Agreement or Agreements, I see no reason – in view of the evident effort already applied to the site – why the Barwell SUE should not attain the 505 dwellings predicted by the council in the following 5 years. In this respect I agree with my colleague who determined the Stanton under Barton case.
18. Although I also agree with my colleague in the Groby case that the calculation of housing land supply is not an exact science, and I conclude that a 5 year supply of deliverable housing sites has been demonstrated in this case. It follows that the consequences which would flow from an undersupply, referred to in the second sentence of paragraph 49 of the Framework, do not apply. I consider that a 5 year supply is locally available and all policies relevant to the supply of housing continue to attract their full weight.

Green Wedge

19. I turn now to consider the second main issue. There is no dispute between the parties concerning the purposes of the green wedges in general – including the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge. They are: to prevent the merging of settlements, to guide development form, to provide 'green lungs', and as a recreational resource. In this case the green wedge extends from the south-western edge of Barwell and Earl Shilton and the north-eastern edge of Hinckley. It covers a total area of just over 440ha and is centred on Burbage Common. I saw on my visit that there is a scatter of development within the area, and it also includes the railway line between Hinckley and Leicester and the A47 which passes to the north of Hinckley and to the south of Barwell.
20. Policy 6 of the Core Strategy is specifically concerned with the future of the green wedge. It provides for the encouragement of appropriate recreational facilities and the positive management of the land, to ensure that it either remains or is enhanced as an attractive contribution to the quality of life of nearby residents. To these ends a number of specific uses are identified – not including housing, but any use should retain the functions of the green wedge and the visual appearance of the area.

21. Although the appeal site falls within the green wedge, the appellant considers the appeal scheme would have no material impact. It would occupy under 0.3% of the total area, and, in the council's recently issued *Green Wedge Review*, it is not included in the areas which are considered to be particularly sensitive. My attention was drawn in this regard to a recent successful appeal decision⁷ for the erection of 4 dwellings at St Mary's Court, Barwell on a site which also lies within the green wedge.
22. I have considered the impact of the scheme against the criteria for the designation of the green wedge and the more particular circumstances of the appeal site. The appeal proposal would marginally extend Barwell to the south-east. Paragraph 9.2.3 of the *Green Wedge Review* recognises that an argument can be made that Barwell and Earl Shilton have already merged, and I agree with the appellant that the current scheme would be of little consequence in seeking to preserve their difference.
23. Similarly, I recognise that the green wedges have a significant effect on guiding the overall form of the growth of settlements. It is evident from the draft *Earl Shilton and Barwell Area Action Plan* that the existence of the green wedge has played its part in encouraging the planned expansion of Barwell to the north-west and of Earl Shilton to the south-west. The current appeal scheme would extend Barwell to the south-east, and although it is a relatively small project in comparison, there would be limited conflict with this purpose of the designation.
24. In contrast however with my conclusions in relation to these purposes, I consider the scheme would have a substantial and adverse effect on the third purpose – that of providing a green lung into the urban areas. Attributable in no small part to the elevation of Shilton Road, the existence of the appeal site as undeveloped land ensures the extension of the countryside into the built-up area of Barwell in a particularly attractive manner.
25. The same point is made in paragraphs 9.4.3 and 10.4.2 of the *Green Wedge Review* which refer to the importance of topography and the long distance views from Shilton Road. The proposed development would effectively extinguish this important aspect of the green wedge. Although I recognise the land itself does not have recreational use, I consider the ability to look across it to the prospect beyond is itself a contribution to the recreational amenity of local residents who merely wish to enjoy the countryside close to the places where they live. Should the land be developed as proposed, they would be denied this opportunity.
26. I conclude in relation to the two latter purposes of the green wedges that the scheme would be in significant conflict. In this sense I believe the proposal would be readily distinguishable from the appeal decision at St Mary's Court cited above. I further conclude in relation to this main issue that the project would breach Policy 6 of the *Core Strategy* and Policy RES5 (Residential Proposals on Unallocated Sites) of the *Hinckley & Bosworth Local Plan*.

Conclusion

27. I have taken account of the other matters raised by the parties, including other appeal decisions and the benefit of the scheme in the provision of housing and affordable housing. Nor do I dispute that the scheme is in a sustainable

⁷ APP/K2420/A/11/2167650

location, or that the concerns expressed about drainage matters could not be readily overcome. However, there are no matters sufficient to outweigh the harm to the green wedge I have identified, nor to conclude the development plan is out-of-date.

28. In the interests of clarity, I also record that even if I had come to the opposite conclusion in relation to the first main issue, I would still have concluded the scheme is in direct conflict with Policy 6 of the *Core Strategy*. I consider the site contributes in no small measure to a valued local landscape of the type cited in paragraph 109 of the Framework, and as such I conclude its protection should be paramount.
29. It is for the reasons given above that I have concluded the appeal should be dismissed.

Andrew Pykett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Jane Gardner	Marrons
Mr John Deakin	David Wilson Homes
Mr Philip Rech BA(Hons) BPhil	FPCR
Dr Suzanne Mansfield PhD MIEEM CMLI	FPCR

FOR THE LOCAL PLANNING AUTHORITY:

Mr Timothy Leader	of Counsel
Mr Richard Crosthwaite	HBBC
Mr Richard Wright	HBBC

INTERESTED PERSONS:

Mr John Prendergast	Leicestershire County Council
Mr Andrew Tyrer	Leicestershire County Council
Mr Stephen Kettle	Leicestershire County Council
Mr Ian Braker	Leicestershire County Council
Mr Terry Kirby	Barwell Parish Council
Ms Renata Pallett	Local resident
Cllr David Gould	HBBC
Cllr Matthew Hulbert	HBBC
Mr Stephen Pears	Local resident
Ms Beryl Surman	Local resident

DOCUMENTS

- 1 Council's Notice of Hearing and circulation list
- 2 Extract from Hinckley and Bosworth Borough Council Core Strategy – Inspector's Report 2009
- 3 Statement of Common Ground dated 23 April 2013 and Appendices
- 4 Section 106 Agreement dated 23 April 2013
- 5 Closing Statement of the local planning authority, and cited case: *North Wiltshire District Council v Secretary of State for the Environment and others* [1992] 3 PLR 113