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## Appeal Decision

Hearing held on 4 December 2014

Site visit made on 4 December 2014

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 6 January 2015**

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**Appeal Ref: APP/Y2430/A/14/2224790**

**Land to the east of Nottingham Road, Melton Mowbray, Leicestershire.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Davidsons Developments Limited against the decision of Melton Borough Council.
  - The application Ref 14/00078/OUT, dated 31 January 2014, was refused by notice dated 12 June 2014.
  - The development proposed is residential development for up to 85 dwellings with associated infrastructure, access and areas of open space.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development for up to 85 dwellings with associated infrastructure, access and areas of open space at land to the east of Nottingham Road, Melton Mowbray, Leicestershire in accordance with the terms of the application, Ref 14/00078/OUT, dated 31 January 2014, subject to the conditions set out in the schedule to this decision.

### Procedural Matters

2. The application was submitted in outline only, with all matters reserved except for access. A site location plan showing the parameters of the proposed development and a plan<sup>1</sup> showing the location and details of the proposed vehicular access and junction arrangements are directly relevant to the determination of this appeal. In addition, an illustrative master-plan<sup>2</sup> was submitted which, together with a Design and Access Statement (DAS), a Landscape and Visual Assessment (LVA), a Transport Assessment (TA), a Flood Risk Assessment (FRA), and other supporting documents, give a likely indication of the character of the proposed development and its impact.
3. Prior to the Hearing the Council withdrew its second, third and fourth reasons for refusal. These related to the effects on ecology and biodiversity, and whether the proposed development would be prejudicial to delivery of the emerging Local Plan. In addition, a jointly agreed Statement of Common Ground (SCG)<sup>3</sup> sets out the issues that are in dispute between the main parties.

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<sup>1</sup> ADC1037/001 Rev D

<sup>2</sup> HG2506-001 Rev C

<sup>3</sup> Statement of Common Ground between the appellant and Melton Borough Council, dated 4 November 2014.

4. A completed and signed Section 106 Agreement was provided at the start of the Hearing. I return to this later in my decision.

## **Main Issues**

5. The main issues in this appeal are:

- the Borough's housing land supply position and its policy implications; and
- whether the proposed development would be sustainable, having particular regard to its effect on the character and appearance of the area.

## **Reasons**

6. The appeal site comprises 2 agricultural fields on land to the east side of Nottingham Road, Melton Mowbray. It adjoins the boundary of the town envelope as defined in the Melton Local Plan (1999) (LP). To the east of the site is established residential development off Kipling Road, to the west is the built up area of the town along Nottingham Road.

### *Housing land supply position and its policy implications*

7. There is no disagreement between the main parties that following the most recent analysis of housing supply in the Borough, there is currently significantly less than a 5 year supply of deliverable housing sites.
8. Where a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites, paragraph 49 of the Framework<sup>4</sup> indicates that relevant policies for the supply of housing should not be considered up-to-date. Housing applications should be considered in the context of the presumption in favour of sustainable development, bearing in mind the objective of paragraph 47 to boost significantly the supply of housing.
9. Saved LP Policy OS2 prohibits development outside of the town and village settlement boundaries as shown on the LP proposals map. Limited exceptions to this are development essential to the operational requirements of agriculture and forestry, and for other small scale development as set out in the policy's criteria. The appeal site lies outside of the town's boundary and the appellant accepts that the proposal would be contrary to this policy.
10. The Council argues that the main thrust and purpose of Policy OS2 is to protect the character and appearance of the countryside and that this is consistent with the Framework. However, the Framework, including but not limited to paragraphs 7, 12, 17 and 55 referred to by the Council, does not mirror the blanket prohibition on development in the countryside that is set out in Policy OS2. The Framework<sup>5</sup> has at its heart a presumption in favour of sustainable development, together with an acknowledgement that the intrinsic character and beauty of the countryside should be recognised<sup>6</sup>. Although this does not provide a 'green light' for wholesale development of the countryside, the Framework clearly provides a more flexible strategy for controlling development in the countryside than is the case with Policy OS2. Given that the Framework considerably post-dates the LP I attach significant weight to the Framework in reaching my decision.

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<sup>4</sup> National Planning Policy Framework (2012)

<sup>5</sup> Paragraph 14

<sup>6</sup> Paragraph 17

11. In addition, there are no local landscape protection policies in the Development Plan specifically in respect of the appeal site, and it is not subject of any statutory landscape designations which would otherwise indicate, by Paragraph 14<sup>7</sup>, that development should be restricted.
12. Consequently, the fact that the proposed development would be located within the countryside does not by itself make it unacceptable in principle.
13. Given that the wording and intention of Policy OS2 seeks to protect the countryside by strictly limiting new development within it, I consider that in doing so it must inevitably also restrict the supply of housing. As such, it is therefore a relevant policy for the supply of housing. I am confirmed in this view by the recent judgment of the High Court<sup>8</sup>, also referred to by the appellants at the Hearing.
14. Since Policy OS2 is a relevant policy for the supply of housing as described above, and the Council does not have a 5 year supply of deliverable housing land, I must therefore regard Policy OS2 as being out of date within the terms of paragraph 49 of the Framework. Consequently, the presumption in favour of sustainable development applies and Paragraph 14 of the Framework is engaged.
15. Paragraph 14 states that where the presumption applies, and where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. Accordingly, I have followed this approach in reaching my decision.

#### *Character and appearance*

16. The main concern of the Council, and also that of many local residents, is that the proposed development would result in the loss of an area of attractive countryside, regarded locally as having a high level of amenity value, and which would be harmful to the character and appearance of the area and surrounding landscape.
17. The site lies within Zone A of the Melton Fringes Character Area in the Council's landscape character assessment<sup>9</sup> (LCA). Zone A extends to approximately 850 metres north of the appeal site and includes the area of land between Nottingham Road to the west of the appeal site and Scalford Road to the east. As such, the appeal site comprises less than 5% of the area of Zone A. Zones A, (and B and C) are identified as being of high quality landscape surrounding the town, and described as consisting mainly of arable and pasture farmland, mostly on the open higher ground to the north of Melton Mowbray, and which form a coherent and well managed rural landscape with few visual detractors. The LCA identified that Zone A was considered to have a high level of landscape sensitivity.
18. The appeal site includes some historic ridge and furrow earthworks, and to the north-west of the appeal site is Sysonby Lodge a Grade II listed building. The

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<sup>7</sup> See footnote 9 to Paragraph 14 of the Framework.

<sup>8</sup> South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Ltd, 10 March 2014, in particular paragraphs 43-47.

<sup>9</sup> Melton Borough Landscape and Historic Urban Character Assessment Report (2006) and updated (2011).

Council does not suggest that the proposal would affect the setting of the listed building. Given the orientation of Sysonby Lodge and its grounds towards Nottingham Road, together with its separation from the appeal site by mature boundary vegetation, I have no reason to disagree with that view. Moreover, having regard to the appellant's indicative layout I am satisfied that sufficient separation and screening with further landscaping could be maintained. I also note that the Council's archaeological advisor does not object to the proposed development subject to there being a programme of archaeological investigation being undertaken. Such a programme could be secured by the imposition of a planning condition.

19. At the Hearing reference was made to the Examining Inspector's (EI) letter<sup>10</sup> to the Council, dated 11 April 2013, in respect of a Northern Sustainable Urban Extension (SUE) in the proposed Core Strategy (CS), which has since been discontinued. However, the EI's concerns were in respect of the proposed broad direction of housing growth (approximately 1000 houses) covering a significantly larger area than is subject of this appeal. No detailed landscape impact assessment of the appeal site formed part of that CS process. Accordingly, I attach only limited weight to the EI's letter in reaching my decision.
20. Given that the appeal site is agricultural and adjoins the edge of the existing built up area of Melton Mowbray, it undoubtedly contributes to the town's rural setting. However, it is located between areas of housing to the south and east, and along Nottingham Road to the west extending to the north. As such, the proposed development would be largely surrounded by existing residential development and hence would not be out of keeping with its immediate surroundings.
21. In views from the northern approach towards the town, along Nottingham Road, the proposed housing would be seen against the back-drop of existing housing and the built up area I have described, although such views would be limited due to the existing mature boundary vegetation along Nottingham Road which would remain. Similarly, in views from the southern approach the proposed development would be seen in the context of the housing and built up part of the town on either side of Nottingham Road. There are no public footpaths through the site, but from distant views towards the site from along footpath E17 to the north-east, the proposed development would again be largely seen against the background of existing development, softened by boundary vegetation.
22. Although illustrative, I consider that the appellant's master plan demonstrates that the site is capable of being developed in a way which would respect the density and form of existing housing in the surrounding area, and that appropriate landscaping and boundary treatment would satisfactorily integrate the site into its contextual surroundings.
23. The proposal would result in the loss of two green fields, and given this change in the appearance of the site I acknowledge that there would be some harm to the rural character and appearance of the land. However, the proposed development would be tightly contained within the context of the existing built up area, with strong boundary vegetation separating it from the remaining open countryside, and would mainly be perceived in localised short-range

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<sup>10</sup> Appendix 5 of Appellant's Statement.

views. As such the degree of harm would be limited. Overall, I conclude that the proposal would assimilate well with the character and appearance of the surrounding existing residential development and would not appear as a significantly harmful intrusion into the open countryside.

#### *Other Matters*

24. The proposal has given rise to concerns from some local residents about the effect on their living conditions, particularly from those living nearest to the site, with regard to outlook and privacy. Without doubt the outlook from the nearest dwellings would change significantly and, although I recognise such a change is undesirable for those residents, I do not consider it would result in a significantly harmful impact on their living conditions with regard to outlook. Moreover, having regard to the illustrative master plan, and the space within the appeal site which would provide for up to 85 dwellings, I am satisfied that the site could be developed in a manner which would not result in any significant adverse impacts on privacy.
25. Other concerns from objectors to the proposal relate to highway safety and capacity, drainage, biodiversity, and also that the proposal would prejudice the delivery of housing through the emerging new Melton Local Plan (MLP). However, the Highway Authority has no objection to the proposal subject to the imposition of planning conditions for off-site works and relevant planning obligations. The Environment Agency and Severn Trent Water Authority independently reviewed the appellant's Flood Risk Assessment and the indicative Sustainable Drainage system and do not object to the proposal subject to appropriate planning conditions. An Ecological Appraisal and Habitat Suitability Index submitted in support of the appeal indicated that the site was not generally of high ecological importance and that development of the site could provide a biodiversity gain by the retention of the eastern ditch and inclusion of green corridors along the existing watercourse, with further planting. Subject to appropriate planning conditions to secure such a net gain in biodiversity, the Councils ecological advisor does not object to the proposal.
26. Given the above factors, there is no convincing evidence before me which would lead me to conclude that these matters would be an over-riding concern.
27. With regard to the concerns that the proposed development would be prejudicial to planned housing growth through the emerging MLP, the Council acknowledged at the Hearing that the emerging MLP is still at a very early pre-adoption stage. Consequently, very little weight can be attached to it. Moreover, there is no evidence before me which would suggest that the scale of the proposed development subject of this appeal would prevent or hamper the delivery of the Borough's future housing needs.

#### *Section 106 Agreement*

28. In the completed Agreement there are covenants relating to affordable housing, police service requirements, open space and maintenance, bus stop and bus shelter provision, bus travel, a travel plan co-ordinator and travel packs, off-site traffic signal works, civic amenity, leisure facilities, library facilities, Melton Country Park facilities, and training opportunities. Support for infrastructure requirements is provided in saved LP Policy OS3 and within the

County Council's SPG<sup>11</sup>. In addition, at the Hearing Mr Tyrer, the County Council's Developer Contributions Officer, and Mr Lambert, the Growth and Design Officer for Leicestershire Police, provided detailed information and justification of the infrastructure requirements and how financial contributions would be spent.

29. The obligations relating to 40% affordable housing provision secure the number and mix of units, and the timing of delivery relative to the market housing proposed. The affordable housing is required in order to meet the identified current housing need and to satisfy the policy requirements of saved LP Policy H7.
30. I am satisfied that the proposed planning obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

## **Conclusions**

31. As set out previously, paragraph 14 of the Framework is engaged. Since LP Policy OS2 is a relevant policy for the supply of housing and must be regarded as out of date, the key consideration in this appeal is whether any adverse impacts resulting from the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
32. The Framework sets out 3 inter-linked dimensions to sustainable development; social, economic and environmental. The Council does not dispute that the proposal would be sustainable in social and economic terms. Indeed, in social terms the proposal would provide for up to 85 dwellings, 40% of them as affordable housing, at a time when there is currently an under-supply of market and affordable housing in the Borough. I consider this to be a significant social benefit of substantial weight.
33. In economic terms, the proposal would provide construction jobs, albeit temporary, together with local training opportunities secured through the S106 Agreement. Also, it would result in some growth in the economically active population with increased household expenditure, some of which is likely to be spent on local services.
34. In environmental terms the appeal site would be well located in terms of its accessibility to the town centre and its services and facilities, both by walking and cycling and public transport. A suitable layout at reserved matters stage, together with appropriate landscaping, boundary treatment, biodiversity enhancement, and open space provision, would provide a high quality environment for future residents.
35. Overall, I consider that the proposed development would be sustainable in social, economic and environmental terms, and that there would be considerable benefits resulting from it as previously described. Against this I have previously identified that there would be a limited degree of harm resulting from the change in the character and appearance of the site itself.

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<sup>11</sup> The Statement for Requirements for Developer Contributions in Leicestershire (reviewed December 2007)

36. In carrying out the balancing exercise set out in paragraph 14, I conclude that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

### **Conditions**

37. A list of potential conditions was discussed at the Hearing which I have considered against the advice in the national Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. As a result, a number were amended and amalgamated for clarity and elimination of duplication, and 2 further conditions were added with the agreement of the parties.
38. It is reasonable and necessary to require reserved matters approval within the standard timetables. For clarity, a condition specifying the approved drawings is imposed. Conditions to secure appropriate landscaping are necessary in the interests of amenity and the character and appearance of the area. Highways conditions, including provision of off-site works and access, construction, parking, footways and road layout, are necessary to ensure highway and pedestrian safety. A condition relating to drainage and sewerage is required in order to ensure that the site is effectively drained. A condition is necessary to ensure a net gain in biodiversity is achieved and a condition to secure a programme of archaeological investigation is also imposed.
39. I have imposed a condition to secure a Construction Management Plan in order to ensure that there is no adverse impact upon the living conditions of local residents, or upon the highway, during the period of construction. A condition is required to secure an updated Travel Plan in order to encourage more sustainable forms of transport. In the interest of ensuring that there is no increase in risk of flooding on or around the site I have imposed a condition requiring that the development is carried out in accordance with the submitted Flood Risk Assessment. A condition is also necessary to control external lighting on the site in the interest of mitigating impacts on bat foraging routes.

### **Overall Conclusion**

40. For all the above reasons, and having regard to all other matters, I conclude that the appeal should be allowed.

*Thomas Shields*

INSPECTOR

### **CONDITIONS SCHEDULE**

- 1) Details of the 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 following approved plans: location plan HG2506/002, ADC1037/001/Rev D.
- 5) No development shall commence on site until a landscape scheme has been submitted to and approved in writing by the local planning authority. This scheme shall indicate full details of the treatment proposed for all hard and soft ground surfaces and boundaries together with the species and materials proposed, their disposition and existing and finished levels or contours. The scheme shall also indicate and specify all existing trees and hedgerows on the land which shall be retained in their entirety, unless otherwise approved in writing by the local planning authority, together with measures for their protection in the course of development.
- 6) The approved landscape scheme (both hard and soft) shall be carried out before the occupation of the buildings or the completion of the development, whichever is the sooner, unless otherwise approved in writing by the local planning authority. 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 consent to any variation.
- 7) No development shall commence on site until the ecological benefits which are proposed to be provided as part of the SUDs and all open spaces on the development have been submitted to and approved in writing by the local planning authority.
- 8) If development does not commence by 30 September 2016 an updated ecological survey shall be submitted to and approved in writing by the local planning authority.
- 9) No dwelling shall be occupied until the access and highway works shown on drawing ADC1037/001/Rev D have been completed and open for use.
- 10) No development shall commence on site until full details of parking and turning facilities, access widths, gradients, surfacing, signing and lining (including for cycle ways and shared use footway/cycle ways) and visibility splays have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) Within 1 month of the new vehicular access being brought into use any remaining part of the existing vehicular access shall be permanently closed and any redundant crossings reinstated in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority.



12) No development shall commence on site until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be adhered to throughout the construction period and shall provide for:

- i) details of construction traffic routing;
- ii) the parking of vehicles of site operatives and visitors;
- iii) loading and unloading of plant and materials;
- iv) storage of plant and materials used in constructing the development;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction.

13) No part of the development as approved shall be brought into use until details of an updated Residential Travel Plan (RTP) has been submitted to and approved in writing by the local planning authority. The RTP shall address the travel implications of the use of the whole site as if the development approved were to have been fully completed and occupied. The RTP shall specify facilities and measures with measurable output and outcome targets designed to:

- i) reduce single vehicle occupancy use, reduce vehicular travel at peak times and reduce vehicle emissions for journeys made for all purposes to and from the site;
- ii) increase the choice and use of alternative transport modes for any journeys likely to be made to and from the site and, in particular, to secure increases in the proportion of travel by car sharing, public transport use, cycling and walking modes and the use of IT substitutes for real travel;
- iii) manage the demand by all users of the site for vehicle parking within and in the vicinity of the site;

The RTP shall also specify:

- iv) the on-site RTP implementation and management responsibilities, including the identification of a Travel Plan Co-ordinator;
- v) the arrangements for regular travel behaviour and impact monitoring surveys and RTP reviews covering a period extending to at least 1 year after the last dwelling is occupied, or a minimum of 5 years from first occupation, whichever will be the longer;
- vi) the timescales or phasing programmes for delivery of the RTP's proposals and for the achievement of the specified output and outcome targets; and
- vii) additional facilities and measures to be implemented if monitoring shows that the RTP's targets are not likely to be met, together with clear trigger dates, events or threshold levels for invoking these measures.

The RTP shall be implemented in accordance with the approved details, and thereafter the implementation of the proposals and the achievement of targets of the RTP shall be subject to regular monitoring and review reports to the local planning authority and, if invoked, to the implementation of the specified additional measures.

14) The development hereby permitted shall not commence until drainage plans for the disposal of surface water and 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) The development shall be carried out in accordance with the Flood Risk Assessment (FRA) dated 14 January 2014 Rev C by Stephen Daykin Consulting Ltd and the following mitigation measures detailed within the FRA:
1. A scheme for the provision and implementation of surface water run-off limitation to existing green field run-off rates.
  2. Provision, implementation and maintenance of a Sustainable Drainage (SuDS) system with storage provided up to the 100 year plus 30% climate change allowance.
  3. Finished floor levels are set no lower than 91 metres above ordnance datum (N).
  4. There shall be no built development within 5 metres from the top of bank of any watercourse.
- 16) Prior to the submission of any reserved matters a programme of archaeological work, informed with an initial phase of trial trenching, will be detailed within a written scheme of investigation which shall have first been submitted to and approved in writing by the local planning authority. No development shall take place other than in accordance with the written scheme of investigation. The scheme shall include an assessment of significance and research questions, and:
1. The programme and methodology of site investigation and recording.
  2. The programme for post-investigation assessment.
  3. Provision to be made for analysis of the site investigation and recording.
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  5. Provision to be made for archive deposition of the analysis and records of the site investigation.
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.
- 17) There shall be no external lighting on the site other than in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.

## **END OF SCHEDULE**

## **APPEARANCES**

### **FOR THE APPELLANT:**

Thomas Hill of Queen's Counsel	Thirty Nine Essex Street
Felicity Jane Gardner BA (Hons)	Marrons Planning
MRTPI	
Iain Reid DipTP DipLP MRTPI	Ian Reid Landscape Planning Limited
CMLI	

### **FOR THE LOCAL PLANNING AUTHORITY:**

James Worley MRTPI	Head of Regulatory Services
Pat Reid BA (Hons) MRTPI	Regulatory Services Manager
John Illingworth	Ward Councillor, Melton Borough Council

### **INTERESTED PERSONS:**

Victoria Hutton of Counsel for Leicestershire Police	No 5 Chambers
Michael Lambert	Growth and Design Officer, Leicestershire Police
Andrew Tyrer	Developer Contributions Officer, Leicestershire County Council

## **DOCUMENTS SUMMITTED AT THE HEARING**

1. Updated letter dated 24.11.14 and supporting enclosures submitted by Leicestershire Police.
2. Closing submissions on behalf of Leicestershire Police.
3. Certified copy of S106 Agreement, dated 3 December 2014, submitted by the appellant.
4. Appeal statement submitted by Andrew Tyrer, Leicestershire County Council.
5. Copy of Statement of Requirements for Developer Contributions in Leicestershire (2007), submitted by Andrew Tyrer.

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