The Planning Inspectorate

Appeal Decision

Inquiry opened on 1 March 2011
Site visit made on 29 March 2011

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 21 July 2011

Appeal Ref: APP/K2420/A/10/2127585
Land South of 26-28 Britannia Road, Burbage

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr John Knapp against the decision of Hinckley & Bosworth Borough Council.
- The application Ref.09/00915/OUT, dated 20 November 2009, was refused by notice dated 23 March 2010.
- The development proposed is the development of 62 no. residential dwellings including access.

Preliminary Matters

1. The case was originally intended to be determined by way of a Hearing. It was opened as such on 26 October 2010 but closed in order to be rearranged as an Inquiry. The subsequent Inquiry sat between 1 and 3 March 2011 and was closed after a further sitting day on 29 March 2011.

2. I carried out an accompanied visit to the site on 29 March 2011 and subsequently took in longer-distance views of the site from the A5 to the south-west and Workhouse Lane to the east, on an unaccompanied basis. As set out at the Inquiry, I had previously taken in evening traffic conditions in the area on 25 October 2010, as a precursor to the abortive Hearing.

3. The original application was made in outline with access and layout to be determined and scale, appearance and landscaping reserved. The application was accompanied by two plans: 3974/01 revision A: Site Layout as Proposed and 3974/02 revision A: Block Plan as Proposed. I have treated all details on the drawings, other than those that bear on access and layout, as illustrative.

4. In its decision on the originating application the Council advanced four reasons for refusal; alleging a detrimental impact on highway safety, and raising issues around archaeology, protected species and the failure to address the need for affordable housing and other infrastructure contributions.

5. Subsequently it became clear that the issues around archaeology and protected species could be dealt with by condition and affordable housing and infrastructure contributions through an Obligation. In the lead up to, and at, the Inquiry the highway authority confirmed that subject to conditions and other provisions, the proposal would not raise any highway safety concerns. As a consequence, the Council did not pursue its reason for refusal relating to that matter. In simple terms, the Council adopted a neutral stance at the Inquiry and advanced no reason why planning permission should not be granted.

6. After the Inquiry closed, there were further submissions from Burbage Matters! raising land ownership issues around the access to the site; an area examined in some detail at the post-Inquiry site visit. In response, the appellant has confirmed that the appeal site, identified on the submitted plans, is under his control. Jurisdiction over land ownership is not mine and in any event, it would be difficult to form any conclusive judgement in the light of the material submitted. In any event, I have to deal with the appeal on the basis of the submitted drawings and this is a matter I return to below.

Decision

7. The appeal is allowed and outline planning permission is granted for the development of 62 no. residential dwellings including access on Land South of 26-28 Britannia Road, Burbage, in accordance with the terms of the application, Ref.09/00915/OUT, dated 20 November 2009, subject to the conditions set out in Annex A to this decision.

Main Issues

8. These are (1) the effect of the proposal on highway safety; and (2) whether in the light of the prevailing housing supply situation in the Borough, the site should be brought forward for housing.

Reasons

Issue 1

9. There are two different aspects to the concerns that have been expressed about the proposal in terms of highway safety. The first is the impact of additional traffic that would be generated by the proposal on Britannia Road and its environs.

10. As set out in the Statement of Common Ground between the appellant and Leicestershire County Council as highway authority, (Statement of Common Ground 2) access to the site is possible from Coventry Road/Windsor Street to the north, either directly from the Coventry Road/Windsor Street/Britannia Road junction or Freemans Lane. To the south/east, it can be accessed from the Britannia Road/Lutterworth Road junction.

11. Concerns were raised about the methodology employed by the appellant in terms of measuring the volume of traffic on Britannia Road and Freemans Lane and traffic speeds. Given the popularity of the Millennium Hall, locating the traffic strips in a position to record all traffic accessing it would have led to higher traffic counts. However, that approach could be said to lead to an over-estimate given that traffic gaining access to the Millennium Hall from the nearby junction of Britannia Road with Coventry Road/Windsor Street would only use a relatively short stretch of Britannia Road. The highway authority expressed satisfaction with the appellant's methodology in terms of traffic volumes and speeds and I see no good reason to differ from their conclusions.

12. Clearly the proposal would generate additional traffic that would pass along Britannia Road and through the junctions referred to above. I recognise, and saw for myself during my site visits, that people tend to park vehicles awkwardly in Britannia Road and its environs and on Coventry Road/Windsor Street. This means that vehicles travelling in one direction may have to wait for one travelling in another to pass parked vehicles. However, there is nothing inherently dangerous in that.

13. Similarly parked cars may make it difficult for residents to get in or out of their driveways safely but again, that is not an unusual situation locally or nationally. Notwithstanding one particular incident that has been drawn to my attention, I have no good reason to suspect that the local road network carries too much traffic already, that it is unusual in its characteristics, or that it raises highway safety concerns. Indeed, parked cars that restrict the carriageway may well have the effect of slowing down traffic, to the benefit of highway safety.

14. Having regard to Manual for Streets and Manual for Streets 2 (MfS) the highway authority accepts that visibility splays at the junction of Coventry Road/Windsor Street and Britannia Road meet the required standards. However, concerns have been raised in relation to the adequacy of the visibility splays at the junction of Freemans Lane with Windsor Street and at the junction of Britannia Road and Lutterworth Road. The appellant has suggested ways in which the shortfalls can be addressed that can be secured by condition. There are detailed issues around the conditions suggested, that I deal with below, but if the junction improvements are secured, the highway authority is satisfied that they could accept the additional traffic generated by the development without detriment to highway safety. I see no reason to disagree with their professional assessment.

15. The second aspect relates to the access into the site from Britannia Road and circulation within the site. Concerns were raised about the junction proposed with Britannia Road but the highway authority expressed their satisfaction with it and, having regard to MfS, adequate visibility would be available.

16. Doubts were also expressed about what was termed a 'pinch point' in the site access road as it passes between existing dwellings. These doubts were reaffirmed in representations made after the Inquiry concerning land ownership in the vicinity of the 'pinch point', a matter I return to below. The submitted plans indicate the layout of the access road as it enters the site from Britannia Road. Given that layout is a matter before me that is the basis on which I have to assess it.

17. According to the plans, the access road proposed may narrow a little as it passes between the existing dwellings. However, it would still be of a width adequate to allow the safe passage of pedestrians and traffic, including emergency vehicles or waste collection vehicles, as required by MfS, and demonstrated by the swept-path analyses submitted by the appellant.

18. Linked to that, questions were raised about whether the layout of the access road within the site complies with the Building Regulations. That is not a matter for me to decide but I see nothing in the layout proposed to suggest that it need cause any undue difficulty in terms of highway safety or providing access for larger vehicles.

19. Policy BE1 of the Hinckley and Bosworth Local Plan (LP) seeks to ensure that all development provides adequate visibility for road users and adequate provision for on and off-street parking for residents and visitors and manoeuvring facilities. LP Policy NE5 is permissive of development in the countryside where, amongst other things, the proposal will not generate traffic likely to exceed the capacity of the road network or impair road safety. Taking all the points raised together, subject to suitably worded conditions, the proposal need cause no difficulties in terms of highway safety in the area around the site, or within the site itself. It would comply with LP Policies BE1 and NE5.

Issue 2

20. All parties accept that the Council does not have a 5 year supply of housing. Paragraph 71 of Planning Policy Statement 3: *Housing* (PPS3) states that where an up-to-date five year supply of deliverable sites cannot be demonstrated, planning applications should be considered favourably, having regard to the PPS overall, including the considerations set out in paragraph 69. Paragraph 69 sets out that in deciding planning applications account should be taken of the need to achieve high-quality housing; ensuring that development achieve a good mix of housing reflecting the accommodation requirements of specific groups; the suitability of a site for housing, including its environmental sustainability; using land efficiently and effectively; and ensuring the proposed 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.

21. There is no suggestion that the proposal would not achieve high-quality housing. Along with housing mix, that is a matter that could be addressed through any subsequent reserved matters application. PPS3 no longer includes an indicative minimum density for new housing but there was no direct suggestion at the Inquiry that the proposal would not use land efficiently or effectively. A total of 62 units on a site area of 2.35 hectares (according to the original application form) would appear to do so.

22. The site is an area of pasture on the southern fringe of Burbage. Whether it falls into Landscape Character Area F as identified in the Hinckley and Bosworth Character Assessment is not entirely clear but it shares many of the identified characteristics. In any event, Policy 4 of the Local Development Framework (LDF) Core Strategy (CS) deals with development in Burbage and, in order to ensure that development contributes to Burbage's character and sense of place, sets out to enhance the landscape structure that separates the village from the M69 corridor. This approach mirrors that of the Burbage Village Design Statement (BVDS) which describes the land between the southern settlement boundary and the M69 as vital to visual amenity. On top of that, LP Policies RES5 and NE5 seek to limit residential development to within defined settlement boundaries and to protect the countryside for its own sake.

23. Against that background, it is plain that development of the appeal site for housing would extend the built form of Burbage towards the M69 motorway. That would not serve to enhance landscape structure as required by CS Policy 4, and if countryside is to be protected for its own sake, it would clearly not accord with the approach of the BVDS or LP Policies RES5 and NE5.

24. However, the degree of harm to the landscape would be limited. The site is on the urban fringe of the village with existing built development to the north and north-east, and playing fields to the west. In longer distance views it is largely seen against the background of existing development or man-made interventions in the landscape. As such, development of the site for housing would not cause any significant harm to the setting of the village.

25. The assessment of the capacity and sensitivity of Landscape Character Area F in the Hinckley and Bosworth Character Assessment acknowledges that sensitivity varies across the diverse urban fringe character area. For the reasons set out the appeal site is not particularly sensitive to change. If housing needs to be provided on land that is not previously-developed, it is not an unsuitable site for that purpose.

26. In that regard, paragraph 1.9 of the CS identifies the loss of greenfield land to development as a potentially adverse effect. However, CS paragraph 4.2 acknowledges that the target of providing 60% of additional dwellings on previously-developed land set out in the East Midlands Regional Plan (EMRP) is not achievable. While a significant proportion of the 9,000 new homes required between 2006 and 2026 have already been provided for, this means that most of the 5046 houses outstanding will need to be located on land that has not been previously-developed, and this is acknowledged in CS paragraph 4.2.

27. The spatial vision of the CS, set out in paragraph 4.5, is to concentrate the majority of housing development in and around the Hinckley sub-regional centre, within the key urban area of the Borough, through sustainable amendments to the settlement boundary and two Sustainable Urban Extensions, with a proportion distributed around rural areas to accommodate particular development needs.

28. Under that umbrella, the approach to development in Burbage is set out in CS paragraphs 4.21 to 4.24 that feed into Policy 4. In terms of new housing, Policy 4 states that to address the small pockets of deprivation in Burbage, support the Burbage local centre, and Hinckley's role as a sub-regional centre, the Council will allocate land for the development of a minimum of 295 new houses, focussed primarily to the north of Burbage.

29. Of that 295, there have already been 110 completions. Moreover, the Council has resolved to grant planning permission for a significant development at Sketchley Brook, a site in the northern part of Burbage that might include as many as 375 new houses, on previously-developed land. Clearly that site being closer to the centre of Hinckley and on previously-developed land means that it would be a more sustainable form of development. However, the figure of 295 in CS Policy 4 is clearly expressed as a minimum so there is no direct reason to reject the appeal site because Sketchley Brook is sequentially superior.

30. I note the views of my colleague on the weight that can be attached to allocations in the CS when the figure has been or is near to being met (APP/K2420/A/10/2130103). I also acknowledge the reference in paragraph 64 of PPS3 to an acceptable range of performance against trajectory being of the order of 10-20%. However, even if the new dwellings at Sketchley Brook are taken into account as deliverable within five years, the Council still cannot demonstrate a deliverable five year supply of housing overall. In that context, the key question is whether, in the light of the CS figures, completions, and the relatively significant amount of new housing that might come forward at Sketchley Brook, the provision of 62 dwellings on the appeal site would prejudice the spatial vision of the CS.

31. Simple addition shows that completions, Sketchley Brook (if it proceeds) and the appeal site will provide a level of housing provision in Burbage that exceeds the minimum figure set out in Policy 4. Clearly there must come a point when the degree of excess would become unacceptable and undermine the spatial vision of the CS. However, in the light of the total amount of housing to be provided in the Borough in the period to 2026, and the Council's approach to that provision, the excess above the minimum figure of 295 that the appeal site will lead to, if Sketchley Brook is implemented in the manner envisaged, is not sufficient to prejudice that spatial vision. It is instructive to note that the local planning authority, responsible for delivery of the CS, do not suggest otherwise.

32. Taking all those points together, the proposal would cause some harm in landscape terms but it would not be significant, and overall, it would accord with paragraph 69 of PPS3. In that light, bearing in mind the housing supply position in the Borough, and the apparent lack of barriers to its early delivery, the proposal draws significant support from paragraph 71 of PPS3 and would provide significant benefits, in terms of housing supply, if brought forward now.

33. On top of that, while there is provision for affordable housing within the Sketchley Brook development, the Unilateral Undertaking (UU) submitted at the Inquiry provides for affordable housing as part of this proposal in excess of the requirements of CS Policy 15. While the need for affordable housing in Burbage may not be as great as it is elsewhere in the Borough, the provision of this level of affordable housing represents a benefit that weighs in favour of the proposal, notwithstanding that affordable housing might also be provided at Sketchley Brook, in time.

Other Matters

34. There have been flooding problems in the area of the site and concerns have been expressed about drainage. However, despite the acknowledged presence of springs on the site, there are no objections from the Environment Agency on the basis of the revised Flood Risk Assessment (FRA) and, as suggested by the local planning authority, conditions can be applied to secure the measures and recommendations in the FRA and details of surface water drainage. On that basis, I see no reason to suspect that the proposal would cause any difficulties for prospective residents of the proposal, or for existing residents in the area, in terms of drainage or the potential for flooding.

35. Local residents hold very strong views about the proposal and these were articulately put forward at the Inquiry and supported by the helpful appearance of the local Member of Parliament. Notwithstanding the suggestion that the Localism Bill gives more say to local residents in planning decisions, no specific provision could be pointed to that would achieve that end and the Bill is yet to come into force. Moreover, while it may be the intention of Government that more weight be given to local residents' views in dealing with planning matters, it is undeniable that PPS3, in setting out the Government's policy on housing, makes plain that where a five year supply of deliverable sites cannot be demonstrated, planning applications for housing should be considered favourably. As set out above, the proposal complies with that policy approach.

Conditions and Obligations

36. I have considered the conditions suggested by the local planning authority, the highway authority and others in the light of advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. Aside from the standard conditions governing the submission of the reserved matters and commencement, a condition is required to specify the approved plans, but only in respect of those matters not reserved for approval.

37. The Council has suggested a condition setting out some details that should be included within any application for approval of reserved matters. External materials, floor levels, the protection of existing trees and hedgerows, and boundary treatments are all matters that need to be dealt with at this stage, but, in the interests of precision, I have used separate conditions that reflect the forms suggested in the Circular. A condition is also necessary to deal with the implementation of the eventual landscaping scheme and its maintenance.

38. Circular 11/95 does suggest that permitted development rights should only be restricted in exceptional circumstances. However, some of the plots have relatively small gardens and it is necessary to ensure that any proposed enlargement of the dwellings on those plots requires planning permission.

39. Given the archaeological interest of the site, and the terms of LP Policy BE14, it is reasonable to apply conditions to secure a written scheme of investigation and its subsequent implementation. I have made minor changes to the suggested conditions to allow for some flexibility with programming. Conditions are necessary to deal with surface water drainage and to address the requirements of the revised FRA. A condition is also required to address contamination. I have modified that suggested to better reflect current Government advice on the subject. Conditions are necessary to secure the mitigation and enhancement measures recommended in relation to protected species and to ensure that the dwellings achieve Code Level 3 of the Code for Sustainable Homes.

40. The first condition suggested by the highway authority would require details of a series of aspects relating to the highway to be submitted for approval. There are difficulties with that. Access and layout are matters to be determined at this stage. It would be unreasonable for the condition to allow those aspects to be revisited. However, it is necessary for details of some aspects, for example the construction method and surfacing material of the access road, to be secured by condition.

41. On top of that, as promulgated, the condition includes no implementation clause. It is clearly necessary to ensure that the access to the site proposed is completed before any dwelling served by it is occupied. The Council has questioned whether such a condition is reasonable given the doubts that have been raised about land ownership. However, as set out, I have no convincing reason to doubt that the appellant controls the land required to form the access shown on the submitted plans. If that proves not to be the case, then that would be a matter for the appellant and possibly the other landowner(s) to resolve before the dwellings could be occupied.

42. Conditions have also been suggested to deal with the improvements proposed to the junctions of Freemans Lane with Windsor Street and Britannia Road with Lutterworth Road. Again there are difficulties with the conditions as put forward. Despite the highway authority confirming that the details shown on the drawings submitted to show the improvements proposed are acceptable to them, the condition requires the details to be resubmitted for approval. That is not reasonable. All that is required is for the condition to specify that the junction improvements shown on the drawings must be completed before any of the dwellings are occupied.

43. The works to the junction of Britannia Road with Lutterworth Road do involve cutting back a hedge owned by a third party and its substitution with a lower fence. However, an agreement is in place between the appellant and the third party involved to carry those works out. In that context, the requirements of the condition are not unreasonable. There was some discussion about the requirement in the suggested condition to ensure the future availability of the visibility splay so formed. However, it would be unreasonable to place the onus for that on the appellant and, notwithstanding the difficulties that might arise, any future problems would need to be addressed by the highway authority in the same way as they would be anywhere else.

44. A condition has been suggested by Leicestershire Police to require details of crime prevention and security measures incorporated in the development. While some aspects might be covered by the reserved matter of landscaping, and other conditions, for example boundary treatments, having regard to the ACPO Secured by Design initiative, and the requirement in LP Policy BE1 to have regard to the safety and security of individuals and property, I agree that such a condition would be reasonable.

45. Finally, Burbage Matters! suggested that a condition be applied to require a full Transport Assessment. While residents' concerns are appreciated, in the light of my conclusions on the highways related issues, such a condition would not meet the test of necessity.

46. As indicated, a completed UU dated 28 February 2011 was submitted at the Inquiry. This addresses a number of matters that I have considered in the context of advice in Circular 05/2005: *Planning Obligations* and the Community Infrastructure Levy (CIL) Regulations.

47. Circular 05/2005 sets out that any planning obligation must be (i) relevant to planning; (ii) necessary to make the development acceptable in planning terms; (iii) directly related to the proposed development; (iv) fairly and reasonably related in scale and kind to the proposed development and (v) reasonable in all other respects. Tests (ii), (iii) and (iv) have statutory force by dint of the CIL Regulations (Regulation 122).

48. First of all, neither the Council nor other interested parties raises any issue in relation to the manner in which the UU deals with the provision of affordable housing as part of the proposal. As set out some provision is required by the development plan (CS Policy 15 refers) and would be necessary to make the development acceptable in planning terms. As a consequence, in this respect the UU meets the tests of Circular 05/2005 and the requirements of the CIL Regulations. Without the provision of affordable housing secured by the UU, planning permission would not be granted.

49. The UU also deals with a range of financial contributions. The proposal will house children who will need to attend local schools. It seems that the local primary school has places available to accommodate additional children but the upper school is at capacity and forecast to remain so.

50. The Education Contribution, calculated on the basis of the County Council's adopted Statement of Requirements for Developer Contributions in Leicestershire (SRDCL), is included to address that shortfall in places. The need is triggered by the proposed development and the contribution is meets the test of Circular 05/2005 and the requirements of the CIL Regulations, therefore. Without it, planning permission would not be granted.

51. In terms of the Libraries Facilities Contribution, I heard that the existing library is operating at capacity and constrained. It is anticipated that the development proposed would add significantly to the number of users of the library. The contribution (calculated on the basis of the SRDCL) is sought to allow the library to be reconfigured to take specific account of that increased usage.

52. On that basis the contribution is directly related to the proposed development, and necessary meeting the tests of Circular 05/2005 and the requirements of the CIL Regulations. Without it, planning permission would not be granted.

53. With reference to the Civic Amenity Site Contribution, it was made plain that the nearest facility is operating at capacity. The dwellings proposed will place an additional burden on that facility and the contribution, calculated in accordance with the SRDCL, is intended to address that through the provision of new or improved infrastructure. On that basis the contribution is directly related to the proposed development, and necessary. Without it, planning permission would not be granted.

54. The Public Play and Open Space Facilities Contribution has been proffered, having regard to CS Policy 19, LP Policies REC2 and REC3 and the calculations prepared by the local planning authority in line with its Supplementary Planning Document: Play and Open Space, to address the pressure additional residents will place on existing facilities in the Burbage area.

55. It is necessary to make the development acceptable in planning terms. As a consequence, it meets the tests of Circular 05/2005 and the requirements of the CIL Regulations. Without it, planning permission would not be granted.

56. Detailed evidence was put forward by Leicestershire Police on the necessity for the Police Contribution. The additional housing proposed will place an additional burden on policing. The contribution is sought to address that burden with a preference for pooling the contribution to achieve economies of scale.

57. Paragraph B21 of Circular 05/2005 does suggest that where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers' contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way. Failing that, a series of targeted options have been suggested.

58. The submitted document 'Policing Contributions from Development Schemes' sets out the predicted population growth rate for Leicester, Leicestershire and Rutland and calculates capital requirements at £606 per new household.

59. Having regard to the advice in paragraph B21 referred to above, pooling contributions on this basis would appear reasonable and fairly related in scale and kind to the proposed development. A similar conclusion can be drawn about the targeted options put forward. In that context, the Police Contribution meets the tests of Circular 05/2005 and the requirements of the CIL Regulations. Without it, planning permission would not be granted.

60. In much the same way, the additional householders brought to the area will place an additional burden on healthcare facilities and the proffered Health Contribution seeks to address that. However, while Leicestershire County and Rutland Community Health Services have provided some information as on how their 'estimate' of £60,000 has been arrived at it is not at all clear what it might, eventually, be used for. While I understand the difficulties involved, it cannot be concluded, therefore, that the contribution is fairly related in scale and kind to the proposed development or necessary to make the development acceptable in planning terms. On that basis, it fails the tests of Circular 05/2005 and does not accord with the CIL Regulations.

61. The Highway Contribution and the Travel Plan Contributions are sought in order, it is said, to encourage sustainable travel to and from the site. The former contribution would be used to improve the nearest bus stop by providing level access and an information display, the latter to provide Travel Packs and two 6 month bus passes per dwelling.

62. Government policy is very clear in encouraging sustainable travel choices. However, the site is not remote from existing public transport facilities and there is no suggestion that they are inadequate. Indeed Leicestershire County Council, as highway authority, has accepted in the Statement of Common Ground 2 that accessibility of the site by non-car means is acceptable. As a consequence of all that, the benefits that would flow from improvements to the bus stop, the Travel Packs and bus passes are not necessary to make the development acceptable in planning terms. These contributions fail the tests of Circular 05/2005 and do not accord with the CIL Regulations, therefore.

63. There was some discussion at the Inquiry about the use of the term improved facilities to describe what several of the contributions in the UU would be used to provide. Clearly, contributions are meant to be used to mitigate the effects of the development and it could be argued that improvement is not mitigation. However, where an existing facility is operating at capacity, mitigating the effect of additional pressure from an increased population might well take the form of providing extra capacity that improves the facility, overall. In that context, the use of the term improved does not undermine the UU.

Conclusion

64. In summary, the proposal would not cause any difficulties in terms of highway safety. There would be a degree of harm to the landscape and to the setting of the village, but nothing of any great significance. The proposal would not prejudice the spatial vision for the area set out in the CS and it would accord with the other requirements of paragraph 69 of PPS3, including the beneficial provision of affordable housing. Other impacts and aspects of the development can be mitigated through the UU or controlled by conditions.

65. In that overall context, bearing in mind the absence of a demonstrable five-year supply of housing, the proposal draws significant support from paragraph 71 of PPS3. Whilst local residents and others have expressed strong reservations about the proposal, that support is overriding and the scheme would provide significant benefits, in terms of housing supply in the Borough, if it is brought forward now.

66. For the reasons given above I conclude that the appeal should be allowed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel	Instructed by the Head of Legal Services, Hinckley and Bosworth BC
He called	
Mr Simon Wood BA(Hons) BTP MRTPI	Head of Planning, Hinckley and Bosworth BC

FOR THE APPELLANT:

Peter Goatley of Counsel	Instructed by Calnan Cox Solicitors
He called	
Paul Stocker FCILT FCIHT	Director, Mayer Ltd
Barry M Waine DipTP MRTPI CMS	Calnan Cox Solicitors

FOR LEICESTERSHIRE COUNTY COUNCIL:

John Prendergrast	LCC
He called	
Kingsley Cook	LCC Highways
Andrew Tyrer	Developer Contributions Officer LCC
Steve Kettle	Senior Manager, Library Service LCC
Ian Braker	Waste Project Officer LCC

FOR BURBAGE MATTERS!

Professor Ray Linforth	Local Resident
Gave evidence & called	
Julie Perrin	Clerk to Burbage Parish Council
Keith Wallinger	Local Resident
Philip Monk	Local Resident
Sharon Bray	Local Resident

FOR BURBAGE PARISH COUNCIL:

Richard Dunnett BA(Hons) MRTPI	Stoneleigh Planning

INTERESTED PERSONS:

David Tredinnick	MP for the Bosworth Constituency
Chief Inspector Sally Chivers	Leicestershire Police
John Bevington	Local Resident
David Inman	Borough Councillor
Stuart Bray	County & Borough Councillor
John Brown	Leicestershire Fire & Rescue Service

PLANS

A 3974/01 revision A: Site Layout As Proposed

B 3974/02 revision A: Block Plan As Proposed

DOCUMENTS

1 Hinckley & Bosworth BC Local Development Framework Core Strategy
2 Extract from Hinckley & Bosworth Character Assessment
3 Appeal Decision APP/K2420/A/10/2130103
4 Appeal Decision APP/K4240/A/10/2125649
5 Committee Reports on Sketchley Brook Proposal
6 Statement of Common Ground 2
7 Highway Authority Supplemental Statement including Mayer Brown Ltd drawings GBBURBAGE.1/05 revision A and GBBURBAGE.1/01 revision A
8 Statement and attachments on contributions
9 Unilateral Undertaking dated 28 February 2011
10 Extract from LP Proposals Map and Block Plan
11 E-Mail from Mrs Perrin regarding views of Fire Service
12 Aerial photograph showing location of Traffic Count Strips
13 Meeting Schedules and Numbers – Burbage Millenium Hall
14 Copy of Correspondence with SoS about housing land supply and the Core Strategy
15 Material submitted by Chief Inspector Chivers
16 Photographs put in by Mr Bevington
17 Extracts from Manual for Streets about Emergency Vehicles, Service Vehicles and Waste Collection Vehicles
18 Sections 79 and 154 of the Highways Act 1980
19 Swept Path Diagrams
20 Letter from S Kellock for Director of Community Safety
21 Technical Note: Compliance with Building Regulation B5
22 Extract from SI 2006 No.1062: definition of reserved matters
23 Bundle of post-inquiry correspondence

Annex A: Schedule of Conditions

1) Details of the appearance, landscaping, 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: 3974/01 revision A: Site Layout as Proposed and 3974/02 revision A: Block Plan as Proposed, but only in respect of those matters not reserved for approval.

5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

6) No development shall take place until details of the finished floor levels of the buildings hereby permitted in relation to existing and proposed ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) No development shall take place until details of all existing trees and hedgerows on the land, and those to be retained, together with measures for their protection in the course of development, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

8) No development shall take place until details of the positions, design, materials and types of boundary treatment, and a timetable for their erection, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with a programme first submitted to and approved in writing by the local planning authority. Any trees or plants planted in accordance with the landscaping scheme for the site, approved by the local planning authority, 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.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development that would otherwise be permitted by Schedule 2, Part 1, Classes A, B, C, D, or E of the Order shall be carried out on plot numbers 20, 21, 24, 25, 30, 31, 34 or 35, as shown on the approved plans.

11) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

12) The applicant, or their agents or successors in title, shall notify the local planning authority of the intention to commence development (including site works of any kind) at least one week before such commencement. Thereafter, the programme of archaeological work shall be completed in accordance with the approved written scheme of investigation, including any fieldwork, post-excavation analysis, report writing and archive deposition. The report and archive shall be prepared and deposited in accordance with a timetable agreed in writing with the local planning authority.

13) No development shall take place until details of a surface water drainage limitation scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the site has been submitted to and approved in writing by the local planning authority. The scheme shall also include a balancing feature that avoids the natural springs in the area to the south of the site and a full assessment of the interaction between the existing and the proposed drainage system. None of the dwellings shall be occupied until the scheme has been completed in accordance with the approved details.

14) The development shall be carried out in accordance with version 2.0 of the Flood Risk Assessment dated 25 February 2010, the mitigation measures detailed in Section 7.0 – Recommendations and a timetable first submitted to and approved in writing by the local planning authority.

15) Development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions i) to iv) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until condition iv) has been complied with in relation to that contamination.

    i) Site Characterisation: An investigation and risk assessment, in addition to any assessment already provided, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR11'* and include:

        1. a survey of the extent, scale and nature of contamination;
        2. an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land,

groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; and

3. an appraisal of remedial options, and proposal of the preferred option(s).

ii) Submission of Remediation Scheme: A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

iii) Implementation of Approved Remediation Scheme: The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

iv) Reporting of Unexpected Contamination: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of i), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of ii), which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with iii).

v) Long Term Monitoring and Maintenance: A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period to be agreed with the local planning authority, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR11*'.

16) The development shall be carried out in accordance with the mitigation and enhancement measures, in relation to protected species, recommended in Sections 5 and 7 of the Extended Phase 1 Study Report (revised 13 May 2010) prepared by Ecolocation and a timetable first submitted to and approved in writing by the local planning authority.

17) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

18) No development shall take place until details, including samples where necessary, of the means of construction of the access road, its surfacing material(s), and its gradient(s) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

19) No dwelling shall be occupied until the vehicular and pedestrian access serving it has been completed in accordance with the approved plans.

20) Before any of the dwellings approved herein are occupied the improvements to the junction of Freemans Lane and Windsor Street shall be completed in accordance with the details shown on Mayer Brown Ltd drawing GBBURBAGE.1/05 revision A.

21) Before any of the dwellings approved herein are occupied the improvements to the junction of Britannia Road and Lutterworth Road shall be completed in accordance with the details shown on Mayer Brown Ltd drawing GBBURBAGE.1/01 revision A.

22) No development shall take place until details of crime prevention and security measures to be incorporated into the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed before the dwellings are first occupied.