Appeal Decision

Inquiry held on 27 & 28 July 2010
Site visit made on 28 July 2010

by Richard Thomas **BA, Dip Arch, RIBA, IHBC**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
7 September 2010

Appeal Ref: APP/K2420/A/10/2125649
Land off London Road, Markfield, Coalville, Leicestershire, LE67 9UR

- 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 Jelson Ltd against the decision of Hinckley & Bosworth Borough Council.
- The application Ref.09/01009/OUT, dated 23 December 2009, was refused by notice dated 18 March 2010.
- The development proposed is residential development with access roads and landscaping.

Preliminary Matters

1. The appeal is in outline, with means of access to be determined at this stage and all other matters reserved for later determination.

Decision

2. I allow the appeal and grant outline planning permission for residential development with access roads and landscaping at Land off London Road, Markfield, Coalville, Leicestershire, LE67 9UR in accordance with the application Ref.09/01009/OUT, dated 23 December 2009 and the plans submitted with it and subject to the conditions set out in the Schedule below.

Main issues

3. The Council withdrew its reasons for refusal Nos. 3 and 4 in respect of Flood Risk and Archaeology respectively, in the light of further information received prior to the Inquiry. The remaining issues are therefore:

   a) whether the proposed development would accord with the development plan in terms of the location and quantum of housing proposed;

   b) the impact of the proposed development upon the character and appearance of the surrounding area;

   c) whether the proposed development would make adequate contribution towards necessary infrastructure costs.

Reasons

Development Plan

4. Following the revocation[1] of the East Midlands Regional Plan (RSS), the development plan now comprises the Hinckley and Bosworth Core Strategy (2009) and the saved policies of the Hinckley and Bosworth Local Plan (2001). Saved Local Plan policy NE5 seeks to protect the countryside for its own sake by restricting development to, amongst other things, that which is important to the local economy and cannot be provided within or adjacent to an existing settlement, and subject to criteria regarding its appearance and traffic generation. Saved policy RES5 restricts new residential development on unallocated sites to those within the defined boundaries of urban areas and rural settlements. Core Strategy policy 8 (CS8) seeks to support local services in Markfield and ensure local people have access to a range of housing. This will be achieved by the allocation of land for the development of a minimum of 80 new homes.

5. The appeal site comprises farmland and agricultural buildings to the south of London Road and to the east of residential development in Birchfield Avenue. It is part of a larger parcel of land extending eastwards as far as Ratby Lane which was identified in the Strategic Housing Land Availability Assessment (Review 2009) (SHLAA) as being developable within 6 – 10 years. About half of the appeal site is identified in the Preferred Options DPD[2] as being suitable for development of new housing which could not be accommodated on smaller sites within the settlement boundary.

6. While the saved Local Plan policies are restrictive, it is clear that the aspirations of the Core Strategy cannot be achieved within the existing settlement boundary of Markfield. This is acknowledged by Council's allocation of half of the appeal site for housing development (MARK01), as the first part of the longer term expansion of the settlement eastwards towards Ratby Lane. Consequently, although the general objective of the saved Local Plan polices in protecting the countryside remain extant and in general accord with national planning policy guidance, having regard to s38(5) of the 2004 Act both policies need to be applied in the light of the more specific objectives in the more recently adopted CS8.

7. The Council's Rural Housing Numbers Methodology Statement (2008) provides an analysis of population projections and identifies the level of housing that would be required in each settlement up to 2026 in order to maintain 2004 population levels. It was agreed in cross examination that this is the only robust evidence of housing need before the Inquiry, and that it shows a need for 147 new dwellings in Markfield.

8. However, in deriving a Core Strategy target figure for Markfield, the Council took this projected need and adjusted it to take account of the 8 criteria set out in the Rural Housing Numbers Methodology Statement, arriving at a total need for 80 dwellings. In the Final Report on the Examination of the Core Strategy (2009) the Inspector considered that the rationale for this refinement was

[1] By section 79(6) of the Local Democracy, Economic Development and Construction Act 2009
[2] Consultation Draft Site Allocations and Generic Development Control Policies Development Plan Document – Preferred Options Report.

clear, but considered the numerical basis for the changes was less clear. Notwithstanding this, the Core Strategy was found to be sound, i.e. justified, effective and consistent with national policy and thus meeting the requirements of PPS 12.

9. However, in addition to allocating 80 dwellings for Markfield, the adopted policy CS8 requires developers to demonstrate that the number, type and mix of housing will meet the needs of Markfield, taking into account the latest Market Housing Assessment and local housing needs surveys where they exist. In this case, the Council agrees that the latest available data identifies the need as being 147 dwellings. Setting aside identified development sites within the settlement boundary (MARK02-06) leaves a projected shortfall of 112 dwellings, which is the number proposed by the appellant on the appeal site. During cross examination, the Council's witness accepted that the proposed development would comply with CS8, and I concur with that view.

10. In this case, the appellant draws further support from Planning Policy Statement 3 *Housing* (PPS3). This document was revised in June 2010 and its current guidance is therefore of significant weight. Paragraph 71 advises that where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in the PPS including the considerations in paragraph 69.

11. The Council accepts that there is a shortfall in the five year housing supply and that, notwithstanding the difference in the extent of the shortfall put forward by each party, the requirement for favourable consideration of the proposal is a significant material consideration. However, the Council drew attention to the requirements of Paragraph 69, which includes the suitability of the site and the need for the proposed development to be in line in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area.

12. In these respects, the Council drew particular attention to the need to protect the countryside, a matter which I address below. It also referred to its spatial vision, the current version of which has cross-party support and is expressed in a letter dated 9 July 2010 from the Leader of the Council to the Secretary of State for Communities and Local Government. This letter seeks support to the change by Council resolution of, amongst other things, the reduction of future district housing requirements from the RSS target of 450 per annum to 430 per annum, and the setting of Core Strategy housing targets as maxima, as opposed to minimum figures.

13. Notwithstanding the level of local political support, this district-wide spatial vision remains an aspiration at this time. Since no response has been received from the Minister and the proposed changes have not been subject to consultation, examination or formal adoption by the Council, I can attach limited weight to this argument when considering the proposed development against current adopted development plan policies and government planning guidance.

Character and Appearance

14. The Council attached considerable weight to the environmental harm and the loss of open countryside that would result from the proposed development and the harmful impact it would have upon the character and appearance of the surrounding area. However, the Council's own Preferred Options DPD identifies the area to the south of London Road, which includes both the appeal site and the Council's allocated site, as being a natural extension to the settlement, describing it as sitting well into the existing urban form and not being visually intrusive.

15. During my accompanied and unaccompanied site inspections I saw the extensive educational and residential development along the northern side of London Road, which extends eastwards as far as Ratby Lane. I also saw the projection of the houses on Croft Way and Birchfield Avenue into the open countryside to the south of London Road. In view of the encompassing nature of the surrounding development, I agree with the Council's view that the area would appear as a natural extension to the existing settlement.

16. I noted that the appeal site and surrounding land slopes generally towards the south, but that the eastern edge falls towards a shallow valley with a stream that runs along part of the hedgerow forming the site boundary. The proposed development would be visible from London Road, both from close by and in longer views from the east towards Ratby Lane. Houses on the western side of the appeal site would be visible from this direction, as would houses on the Council's allocated site. However, I noted that houses located on the eastward sloping part of the appeal site would be obscured to a significant degree by the rising ground beyond the stream and by intervening vegetation.

17. I acknowledge the need to minimise land take by the use of tightly drawn settlement boundaries. However, I consider that the proposed extension of housing beyond the arbitrary straight boundary of the allocated site towards the valley bottom would not result in any significantly greater visual impact upon the character and appearance or the adjoining countryside than the development of the allocated site alone. As a result, I consider that the proposed development would comfortably into the existing urban form that adjoins it and would not be unacceptably intrusive or harmful to the character and appearance of the surrounding countryside. I therefore conclude that the proposed development would not conflict with the objectives of Local Plan policies NE5 and RES5.

Infrastructure Contributions

18. A planning agreement has been put before me and the Council has confirmed that it is satisfied that the document would achieve that which it purports to do. It makes provision for 40% of the dwellings to be affordable dwellings, the provision of on-site public open space and contributions towards means of sustainable forms of travel. I concur with the parties in considering that these payments are necessary to make the development acceptable in planning terms, that they are directly related to the development, and are fairly and reasonably related in scale and kind to the development. I therefore consider them to be significant material considerations in reaching my decision.

19. Contributions were sought by the County Council towards unspecified improvements of the Coalville civic amenity site and to the library service. No analysis of the impact of the proposed development upon these existing services has been provided, nor any description of how the contributions would be spent to specifically address those impacts, contrary to the guidance in paragraph B35 of Circular 05/2005.

20. Contributions were also sought by the local Primary Care Trust for unspecified improvements to local surgery facilities in Markfield or Groby to deal with the impact of the proposed development. Leicestershire Police also sought a contribution towards pooled funds for as yet unidentified capital expenditure in the Hinckley and Bosworth area at some time within the next ten years. As above, no analysis of the impact of the proposed development upon existing services has been provided, nor any description of how the contributions would be spent to specifically address those impacts. I therefore consider that these contributions would be contrary to the guidance in paragraph B35 of Circular 05/2005, and not necessary to make the proposed development acceptable in planning terms. I have therefore disregarded them in my consideration of the merits this case.

Other Matters

21. Concerns were expressed by an interested party over the impact of traffic arising from proposed development upon the road network in the surrounding area and its potential to exacerbate problems of access onto nearby trunk roads and M1 motorway. However, I note that the highway authority has not raised any objection to the proposed development in terms of the capacity of the existing network or of any particular junctions that might be adversely affected by traffic movements that might arise from the proposed development. There is no evidence before me to suggest that the level of residential development proposed would result in any harm to the safety of highway users, or result in unacceptable traffic congestion elsewhere in the road network. Consequently, I am unable to attach significant weight to this argument.

Conditions

22. I have adopted the conditions put forward in the Addendum to the Statement of Common Ground, subject to the use of the model conditions where appropriate or the minor amendments agreed at the Inquiry or which I consider necessary for clarity or precision. In addition to conditions regarding the submission of reserved matters and the commencement of the development, I shall require compliance with the submitted plans for the avoidance of doubt and in the interests of proper planning. I shall also require the implementation and maintenance of an approved landscaping scheme, in the interest of the amenity of residents and of the character and appearance of the area.

23. In the interests of highway safety I shall require the construction of access roads, internal roads, footpaths and pedestrian crossing in accordance with approved details, the provision of a suitable vision splay to the access road junction with London Road, together with necessary crossing facilities, and the

provision of contractors' parking and vehicle wheel cleaning facilities for the duration of the construction period.

24. In the interest of public health I shall require the identification and remediation of any sources of pollution within the appeal site by approved means. In the interest of sustainable drainage and flood prevention, I shall require the implementation of an approved surface water disposal scheme, the protection of the watercourse and the construction of houses at a suitable level above potential flood levels.

25. So as to ensure satisfactory recording of archaeological and historic features, in accordance with Planning Policy Statement 5 *Planning for the Historic Environment,* I shall require the implementation of approved programmes to investigate and record any such features within the appeal site.

Conclusions

26. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that proposals shall be determined in accordance with the plan unless material considerations indicate otherwise. I have concluded that the proposed development conforms to C8 and would not conflict with the objectives of the Local Plan policies that predate the Core Strategy, nor cause unacceptable harm to the character and appearance of the surrounding area. It would also make a substantial contribution towards meeting the identified need for affordable dwellings in the area. Having regard to these considerations and to and all other matters raised, I conclude that the appeal should succeed and planning permission be granted, subject to the conditions set out below.

Schedule of Conditions

1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

    1. Location Plan 1:1250 received 24.12.10

    2. Drawing no. 218070-Q-008 received 11.01.10

5) No development shall take place until details of the roadways, footways and parking areas, including finished levels, surfacing materials, drainage and edge details 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 other development shall commence until a visibility splay of 4.5 metres by 120 metres has first been provided across the land under the control of the applicant for the right hand view from the junction with London Road. This shall be in accordance with the standards contained in the current 6Cs design guide, '*Highways, transportation and development*' and shall be so maintained thereafter. Nothing shall be placed or allowed to grow above a height of 0.9 metres above ground level within the visibility splay.

7) Prior to commencement of the development hereby permitted details for the design of the following works shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall thereafter be completed in accordance with the approved details prior to the first occupation of any dwelling constructed pursuant to the permission hereby granted or any approval of reserved matters pursuant to this permission:

    1. pedestrian crossing facilities on London Road in proximity to the proposed main access to the site and at the proposed pedestrian/cycleway accesses at the eastern and western ends of the site frontage;

    2. the off-site highway works on London Road as generally shown on drawing No. 218070-Q-008.

8) For the period of construction of the development vehicle parking facilities shall be provided within the site for all vehicles associated with the development and vehicle wheel cleansing facilities shall be provided within the site and all vehicles exiting the site shall have their tyres and wheels cleaned before entering the highway.

9) No development approved by this permission shall commence until a scheme for the investigation of the potential land contamination of the site has been submitted to and agreed in writing by the Local Planning Authority which shall include how any contamination found shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to any dwelling first being occupied.

10) If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out prior to any dwelling first being occupied.

11) No development hereby, or by the approval of any reserved matters be permitted shall commence until a scheme for surface water drainage including drainage plans has been submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved details.

12) No development shall take place within 8 metres of the watercourse which flows along the eastern boundary of the site.

13) The finished floor level of all dwellings shall be set at least 600mm above the 1 in 100 year flood level.

14) All boundary treatments, planting, seeding and turfing comprised in the approved landscaping details shall be carried out in accordance with the approved implementation scheme submitted with the reserved matters application. 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 a similar size and species unless otherwise agreed in writing with the Local Planning Authority.

15) No development shall commence until the implementation of a programme of archaeological work in accordance with a written scheme of investigation previously submitted to and approved in writing by the LPA has been secured.

16) No development shall take place until the implementation of a programme of historic building recording conducted in accordance with a written scheme of investigation previously submitted to and approved in writing by the local planning authority has been secured.

Richard Thomas

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Cannock	Of Counsel Instructed by Michael Price, Borough Solicitor
He called	
Stephen Ottewell *MRTPI*	Principal Planning Consultant, Urban Vision Partnership Ltd,

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC	Instructed by GVA Grimley Ltd
He called	
Robert Thorley *BA(Hons), DipTP, MRTPI*	Associate Planner, GVA Grimley Ltd

INTERESTED PERSONS:

Cllr Matthew Lay	Ward Councillor and Chair of Parish Council
Gillian R Weston	Local resident

DOCUMENTS

Document	1	Notification of the Inquiry
Document	2	Bundle of two letters received in response to the Notification
Document	3	Mr Ottewell's Proof of Evidence
Document	4	Summary of Mr Ottewell's Proof of Evidence
Document	5	Appendices 1-7 to Mr Ottewell's Proof of Evidence
Document	6	Mr Thorley's Proof of Evidence
Document	7	Summary of Mr Thorley's Proof of Evidence
Document	8	Appendices 1-32 to Mr Thorleys' Proof of Evidence
Document	9	Statement of Common Ground, dated May 2010
Document	10	Addendum to the Statement of Common Ground, dated July 2010
Document	11	Planning Agreement under s106 dated 26 July 2010
Document	12	Committee Report and decision re 09/00798/FUL, 8 January 2010