



Appeal Decision

Hearing (Virtual) held on 23 August 2022

Site visit made on 23 August 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/K2420/W/22/3297466

Land at The Coppice, Burbage, Hinckley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Springbourne Homes against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/00556/FUL, dated 30 April 2021, was refused by notice dated 27 October 2021.
 - The development proposed is described on the application form as: 'Resubmission of Refused Application Ref: 20/00094/FUL - revised proposal for the erection of No. 8 dwellings with associated access and landscaping'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 dwellings with associated access and landscaping at Land at The Coppice, Burbage, Hinckley in accordance with the terms of the application, Ref 21/00556/FUL, dated 30 April 2021, subject to the conditions set out at the end of this decision.

Preliminary Matters

2. It has been brought to my attention that a new Local Plan is emerging. However, this has yet to reach examination stage such that its emerging policies attract limited weight currently. I shall consider the appeal on this basis.
3. A unilateral undertaking pursuant to Section 106 of the Act (the UU) is before me. This is dated 23 August 2022 and is signed by the appellant as landowner. I shall return to the UU later.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the rural area;
 - The effect of the proposal on the role and function of the Hinkley/Barwell/Earl Shilton/Burbage Green Wedge (the Green Wedge); and
 - Whether or not the proposal would make efficient use of land, having particular regard to the density of development.

Reasons

Character and appearance

5. The site is located outside, but adjacent to, Burbage's designated settlement boundary, and thus in the countryside as defined in local planning policy terms. Policy 1 of the Burbage Neighbourhood Plan (the BNP) states that, subject to compliance with other development plan policies, residential development on land within or adjacent to the settlement boundary will be supported.
6. Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document (2016) (the DMPDPD) indicates that, to protect the countryside's intrinsic value, beauty, open character and landscape character, only selected types of development in the countryside will be considered sustainable. These specified types of development do not include residential dwellings with unrestricted occupancy.
7. The site is comprised of an area of predominantly grassed land that is adjoined by existing residential development to the west and north and that is bound by established planting to parts of its perimeter. It is located within the Green Wedge and the BNP identifies the site and surrounding lands to comprise a series of Local Wildlife Sites. The site is not publicly accessible and sits to the west of, and adjacent to, further private land (the green land) falling under the control of the appellant. The green land is of broadly comparable area when compared to the site and contains various mature trees and other planting. A public footpath, which I observed to be well-used, runs alongside the site's southern boundary. This leads from Woodgate Road to Burbage Wood and connects into a wider network of local footpath routes.
8. The site falls within the Burbage Common Rolling Farmland landscape character area¹, the key characteristics of which include large scale gently rolling arable and pasture farmland, sparse settlement and open landforms. The site's surroundings are largely reflective of the character area's typical characteristics. Nevertheless, the appeal site itself shares an immediate relationship with the built edge of Burbage and, being well enclosed, can be experienced as distinct from its wider farmland setting. To my mind, despite its rural nature and the Green Wedge and Local Wildlife Site designations that apply, the site has somewhat limited landscape value.
9. Nevertheless, it remains that eight dwellings and associated access infrastructure would be introduced to an out-of-settlement grassland site. It is inevitable that some harm would be caused to the character and appearance of the countryside. However, as was apparent upon my inspection, publicly accessible views into the site tend to be localised and often heavily restricted by the presence of intervening hedgerows and other planting that would realistically continue to offer considerable screening/filtering of views during the period of the year when deciduous species lose leaf. It was also observable that such views into the site, where available, tended to be influenced by the built edge of Burbage.
10. I accept the suggestion made by the appellant that the proposal is landscape-led. This is perhaps best illustrated by the intention to position dwellings in two distinct parcels such that a central corridor of retained/upgraded grassland

¹ in accordance with the Hinkley and Bosworth Borough Landscape Character Assessment (September 2017)

would permeate the site. Further, the UU secures the implementation of an Ecological Mitigation and Enhancement Strategy to include proposals for the management and maintenance of the adjacent green land. Such proposals would apply in perpetuity (should the land not be adopted by the Council or a nominee of the Council). Most existing trees across the site and the green land would be protected/retained and supplemented by additional tree planting and other soft landscaping, the full details of which could be secured via condition should the appeal be successful. I also note that the green land's retention and ongoing management offers clear assurances that the new estate road would be unable to serve additional residential development in the future.

11. To my mind, the scheme's likely visual effects would become increasingly limited as the intended landscaping measures establish and mature over time. Moreover, in wider views from the surrounding countryside, the proposal would not be experienced as a noticeable or entirely unexpected excursion into the open countryside. Even so, for reasons set out above, the scheme would cause some limited harm to the character and appearance of the rural area.
12. As there is no evidence to indicate that a satisfactory form of development in terms of high-quality design would not be achieved, there would be compliance with Policy DM10 of the DMPDPD. However, there is conflict with Policy DM4 in so far as it indicates that the intrinsic value and beauty of the countryside shall be protected. As compliance with Policy 1 of the BNP is subject to adherence with other policies of the development plan, the scheme would also conflict with Policy 1. I shall return to the implications of these conflicts in the Planning Balance.

Role and function of the Green Wedge

13. The site is located within and to the edge of the Green Wedge. The supporting text to Policy 6 of the Core Strategy (2009) (the CS) confirms that the Green Wedge exists to protect the separation of settlements, to provide easy access from urban areas into green spaces and to contribute towards the quality of life for residents. Whilst only specific land uses are listed as acceptable in the Green Wedge, Policy 6 does not preclude any other land uses or associated developments potentially coming forward. Rather, any such use/development is to be considered against four criteria: it should retain the function of the Green Wedge; retain and create green networks; retain and enhance public access to the Green Wedge; and retain the visual appearance of the area. It is also relevant that the policy promotes the positive management of land to ensure that the Green Wedge remains or is enhanced.
14. As set out in the Council's latest full review² of the Green Wedge, its southernmost area (where the site is located) does not perform a very strong role in preventing the merging of settlements as it is some distance from Barwell and Earl Shilton. Moreover, especially when considering the positioning of existing built development along the site's northern edge, I do not consider that the proposal that is before me would have a material effect upon the separation of settlements.
15. The proposal would, contrary to any suggestion made otherwise, promote and enhance public access to the Green Wedge for the purposes of recreation. Indeed, the UU sets out to secure public access to the green land (to include

² Hinkley/Barwell/Earl Shilton/Burbage Green Wedge Review (April 2020),

the provision of a footpath connecting to the public footpath that runs the site's southern boundary) and that the green land is maintained and used as open space in perpetuity. In both accessibility and recreational terms, this would represent a marked improvement for a range of local occupiers when compared to present circumstances.

16. It is thus apparent that, whilst involving the introduction of residential development to out-of-settlement rural land, the scheme actively embraces the ethos and overarching intentions of Policy 6. Moreover, green networks would be retained/created, public access would be enhanced, and landscape mitigation in conjunction with a sympathetic and logical site layout would ensure that the visual appearance of the area would be acceptably retained. As such, the proposal has an acceptable effect upon the role and function of the Green Wedge, and I do not identify conflict with Policy 6.

Efficient use of land – density of development

17. Policy 16 of the CS sets out that proposals for new residential development will be required to meet a minimum net density of at least 40 dwellings per hectare within and adjoining various settlements that include Burbage, but that, in exceptional circumstances, a lower density may be acceptable where individual site circumstances dictate and are justified.
18. A series of adjacent area density maps³ have been produced that assist in demonstrating that the intended density of development would be respectful of the densities exhibited by existing adjoining residential development. I also accept arguments that have been made with respect to the site's edge-of-settlement location not readily lending itself to a more intensive form of development. Indeed, a higher density scheme would, to my mind, be unduly problematic to integrate effectively in conjunction with suitably strong structural landscaping.
19. For the above reasons, having particular regard to the density of development, the proposal would make efficient use of land. The scheme satisfactorily accords with Policy 16 of the CS and the National Planning Policy Framework (July 2021) (the Framework) in so far as these policies promote making effective use of land.

Other Matters

20. I have noted concerns raised by interested parties that biodiversity could be degraded, and I acknowledge that there have been sightings of various wildlife species on site. Nevertheless, the ecological interest of the site and the green land has been comprehensively assessed. A range of habitat and faunal surveys that involved special attention being paid to the potential presence of protected species, such as badgers, bats and great crested newts, have been carried out.
21. A preliminary Ecological Mitigation and Enhancement Plan⁴ has been devised that would incorporate various mitigation and enhancement measures to guard against adverse effects upon protected species and to promote the achievement of biodiversity net-gain. Most of these measures relate to the green land and would be secured through the UU. I am satisfied that

³ Appendix A to the appellant's Appeal Statement

⁴ Ref: Plan ECO2 Rev E

- appropriate mitigation would be provided for any loss of habitat necessitated by the scheme. The ecological importance of any Local Wildlife Site would not be harmed in compliance with the requirements of Policy 8 of the BNP.
22. References have been made by interested parties to the past felling of protected trees and a failure to replace. Indeed, a separate enforcement matter is mentioned in the Council's Officer Report. Nevertheless, I have seen or heard nothing to compromise the assessments and proposals documented in the submitted Arboricultural Impact Assessment⁵. The scheme would necessitate relatively limited direct works to existing trees (protected or otherwise) and appropriate assurances have been provided that only specimens surveyed as being of low quality would be lost.
23. Whilst concerns have been raised relating to increased traffic and/or junction capacity, the Highway Authority (the HA) has advised that the impacts of the development upon highway safety would not be unacceptable and that, when considered cumulatively with other development, the impacts on the road network would not be severe. This is a matter of importance because the HA are responsible for the safety of users of the local highway network. I also note that a 5m wide carriageway is proposed (in conjunction with footway and turning provisions) and that planting to be retained adjacent to the new estate road would not realistically impede visibility to any unacceptable degree. All related matters considered, I am satisfied that highway and pedestrian safety would not be prejudiced.
24. Given the relatively limited number of properties proposed, any noise or disturbance associated with future movements along the new estate road to be constructed would not be anticipated to have an unacceptable effect upon the living conditions of the closest existing residential occupiers. I note that neither has the Council raised concerns in this sense.
25. The scheme comprises two 3-bed bungalows, two 4-bed houses and four 5-bed houses, all market dwellings. Whilst the focus of the proposal tends to be towards larger house types, there is sufficient variety to cater for a range of occupational requirements. I also note that the number of dwellings intended is not sufficient to generate a requirement for a mix of housing types and tenures as specified by Policy 16 of the CS. Whilst the site exceeds 0.5Ha in area, which is one of the relevant thresholds for providing affordable housing as set out at Policy 15 of the CS, the Council has not requested any on-site provision or off-site contribution. There is no substantive evidence before me of any identified local need and, bearing in mind the limited number of dwellings proposed, I am satisfied that the intended mix of house types and tenures is acceptable.
26. Concerns have been raised that the proposal would place additional stress upon local infrastructure, facilities and services. However, given the modest number of new dwellings being considered, any such effects would not be so significant to generate a requirement for mitigation by way of planning obligation. This is consistent with the stance taken by the Council in accordance with relevant policy related to planning obligations.
27. The garage intended to serve Plot 1 would be positioned adjacent to the site's northern boundary. Notwithstanding the proximity of a boundary hedge to be

⁵ Ref: 1241-AIA-V1-B.

retained, the suggestion made by a neighbouring occupier that this garage could not be constructed in accordance with the submitted site layout has not been clearly substantiated. A purchase agreement has been separately referred to by another local occupier, which they suggest offers use of a paddock to the rear of their property. However, any dispute relating to matters of private rights of access would constitute a civil matter to be resolved outside of this appeal. Indeed, private property rights are rarely material to planning decisions.

Planning Balance

28. As indicated at paragraph 11 to the Framework, the presumption in favour of sustainable development is engaged in circumstances that include where the policies most important for determining a scheme are out-of-date. This includes, with respect to proposals for housing, where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites.
29. The Council has accepted that it cannot currently demonstrate a five-year supply of deliverable sites. It is my understanding from discussion at the Hearing that the Council's latest published position is a housing supply figure of 4.89 years. As such, the presumption in favour of sustainable development is engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
30. Whilst paragraph 14 of the Framework identifies different considerations where a neighbourhood plan is present, its provisions do not apply in this case because the BNP does not contain policies and allocations to meet its identified housing requirement.
31. I have identified conflict with Policy DM4 of the DMPDPD and with Policy 1 of the BNP. Policy DM4 is consistent with the Framework in the sense that it seeks to protect the intrinsic value, beauty, open character and landscape character of the countryside and does not impose protection of the countryside in its totality. Policy 1, being recently adopted and offering flexibility with respect to residential development situated at Burbage's settlement edge, is also consistent with the Framework. However, for reasons that I have already set out above, notwithstanding the site's out-of-settlement location, the proposal would cause merely limited harm to the character and appearance of the area.
32. The scheme would provide various benefits, including the delivery of eight accessibly located additional market dwellings in a Borough where there is an acknowledged housing land supply deficit. As set out in the Framework, it is a Government objective to significantly boost the supply of homes. Indeed, Policy 4 of the CS sets out that land shall be allocated at Burbage for a minimum number of new residential dwellings and does not impose a ceiling on housing delivery. In the context described here, the scheme's benefits in a housing delivery sense attracts considerable weight. Other benefits include investment in the local economy, biodiversity net-gain, remediation of the site in view of former licensed waste management activities.
33. Having considered the benefits and adverse impacts of the scheme before me, I conclude that the harm I have identified to the character and appearance of

the area and the associated policy conflicts would not significantly and demonstrably outweigh the proposal's benefits when assessed against the Framework's policies taken as a whole. As such, the presumption in favour of sustainable development, as set out in the Framework and at Policy DM1 of the DMPDPD, applies.

34. Thus, whilst the proposal conflicts with the development plan when read as a whole, there are other material considerations, including the Framework, that outweigh that conflict, such that the appeal should be allowed.

The UU

35. I am satisfied that the various green land related obligations secured through the UU are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind. Indeed, the delivery of a robust Ecological Mitigation and Enhancement Strategy would be integral to any successful future implementation of the scheme. The legal certainty provided by the UU makes it the most fitting and appropriate way of ensuring that this off-site strategy is delivered and maintained effectively. For the avoidance of doubt, I am content that, from the evidence before me, the UU is fit for purpose.

Conditions

36. As part of a Statement of Common Ground signed by the main parties to this appeal and submitted in advance of the Hearing, a list of agreed conditions has been provided. Following further discussion at the Hearing, I have considered the conditions against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments to some of them for consistency and clarity purposes and have added other related to landscaping, boundary treatment and ecological mitigation. Pre-commencement conditions have only been applied where agreed to by the appellant and where necessary to guide initial works on site. In the interests of certainty, a condition specifying the approved plans is required.
37. In the interests of highway safety, conditions requiring the approved access arrangements and parking and turning facilities to be implemented prior to occupation are reasonable and necessary to impose. For the same reason, and also to protect the living conditions of local residents, a Construction and Environmental Management Plan is necessary to condition which, amongst other provisions, would secure measures to control noise and dust emissions. In the interests of highway safety and protecting the general amenities of the area, a waste collection scheme is also reasonable and necessary to condition.
38. In the interests of protecting human health and guarding against the possible effects of land contamination, conditions to secure: the submission and carrying out of a site investigation scheme, further remediation if unsuspected contamination were to be identified during the construction phase, and the submission and implementation of a scheme of gas protection measures, are reasonable and necessary to impose.
39. In the interests of ensuring that existing trees intended to be retained are suitably protected during the construction phase, a condition is reasonable and necessary to ensure the installation of protective fencing in accordance with the submitted Arboricultural Impact Assessment.

40. In the interests of safeguarding the character and appearance of the area and promoting biodiversity, a condition to secure a scheme of hard and soft landscaping, to include confirmation of all existing trees and hedgerows to be retained and full details of boundary treatment, is reasonable and necessary to impose. As is a further condition requiring the replacement of any newly planted trees or plants that are removed or that become damaged or diseased over a five-year period. To also protect the character and appearance of the area, a condition requiring details of external facing materials is reasonable and necessary to impose.
41. In the interests of securing biodiversity net-gain and in recognition that the UU is focussed upon the green land, a condition that secures the submission, implementation and future maintenance of a scheme of on-site Ecological Mitigation and Enhancement Measures to broadly accord with various measures that are depicted upon the preliminarily submitted Ecological Mitigation and Enhancement Plan (including the provision of a hedgerow maintenance corridor along the site's southern boundary) is reasonable and necessary to impose. To also guard against harm to biodiversity, a further condition is reasonable that ensures that no external lighting is installed unless details are first provided.
42. To ensure that potential archaeological interest is properly assessed, a condition is reasonable that secures investigation and recording in accordance with a Written Scheme of Investigation to be submitted.
43. In the interests of flood risk management and ensuring that surface water at the site is appropriately dealt with, a condition securing the submission and implementation of a surface water drainage strategy to include associated maintenance details is reasonable and necessary to impose. The site is located within Flood Zone 1 such that it is at low risk from fluvial flooding, and no objection to the proposal has been forthcoming from the drainage authority. I also note here that foul water drainage provisions are contained within the Building Regulations.

Conclusion

44. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12/71 35; 12/71 26P; 12/71 28B; 12/71 30B; 12/71 33C; 12/71 36C; 12/71 37B; 12/71 41; 12/71 42; 12/71 43; 12/71 44; 12/71 45; 12/71 46.
- 3) No development shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. This shall include the following details: the provision made for the parking of vehicles by contractors, site operatives and visitors; the storage of plant and materials used in construction of the development; the erection and maintenance of security hoarding; measures to control the emission of noise during construction; measures to control the emission of dust and dirt during construction; details of how the site will be drained during construction. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period.
- 4) No development shall commence until a site investigation scheme dealing with contamination, any resultant remediation measures, verification these measures have taken place and details of any necessary future monitoring has been submitted to and approved in writing by the Local Planning Authority. The site shall be developed in accordance with these approved details.
- 5) If during development any contamination not previously identified is found to be present, then development in areas impacted by that finding shall cease until additional remediation measures to deal with the unsuspected contamination have been submitted to and approved in writing by the Local Planning Authority. The site shall be developed in accordance with these approved details.
- 6) No development shall commence until a scheme of gas protection measures as recommended within the submitted report on Ground Investigation by Nicholls Colton Geotechnical Ref G16195-IR has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.
- 7) No development shall commence until a surface water drainage strategy and associated maintenance details, incorporating sustainable drainage principles, (SuDS), has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be developed and maintained in perpetuity in accordance with these approved details. This drainage scheme shall not include any infiltration of surface water drainage on any land affected by contamination unless this has been agreed by the Local Planning Authority under the terms of Condition 4 above.
- 8) No development shall commence until an archaeological Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research objectives. If indicated to be required, it shall include the programme and methodology of any necessary site

- investigation and recording, and the development shall be carried out in accordance with this approved methodology.
- 9) No development shall commence until protective fencing has been erected around all trees not scheduled for removal in accordance with the submitted Arboricultural Impact Assessment Ref 1241-AIA-V1-B. Thereafter the protective fencing shall be retained for the duration of the works and in accordance with the above report and the recommendations of BS5837:2012. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced areas; soil levels within the root protection area of the trees/hedgerows to be retained shall not be raised or lowered, and there shall be no burning of materials where it could cause damage to any tree or tree group to be retained on the site or on land adjoining at any time.
 - 10) No development shall commence until a hard and soft landscaping scheme, to include full boundary treatment details, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall identify all existing trees and hedgerows to be retained and shall be carried out in full prior to the first occupation of the development or in accordance with a programme to be agreed otherwise in writing by the Local Planning Authority.
 - 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 12) No building shall be constructed above damp proof course level until details of the facing bricks, roof tiles and window and door finishes have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.
 - 13) No occupation of any dwelling shall take place until a scheme of on-site Ecological Mitigation and Enhancement Measures, to broadly accord with the various measures depicted upon the submitted Ecological Mitigation and Enhancement Plan (Ref Plan ECO2 Rev E) and to include a timetable for delivery and maintenance programme, has been submitted to and approved in writing by the Local Planning Authority. The measures identified shall be delivered in accordance with the approved timetable and maintained in perpetuity in accordance with the approved maintenance programme.
 - 14) No occupation of any dwelling shall take place until the access arrangements shown on approved plan 12/71 26P have been provided in accordance with that plan and implemented in full. The access arrangements shall thereafter be so retained.
 - 15) No occupation of any dwelling shall take place until a waste collection scheme that makes adequate provision for the storage and collection of waste has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance

with the approved scheme, and the approved storage and collection facilities shall be retained at all times thereafter.

- 16) No dwelling shall be occupied until the parking and turning provision for that dwelling have been implemented in accordance with the approved plan Ref 12/71 26P. The approved parking and turning facilities shall thereafter be so retained.
- 17) No external lighting shall be installed unless details of the position and type of lighting have first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with any approved details.

APPEARANCES

FOR THE APPELLANT

Brian Mullin	Partner, Marrons Planning
Karen Brightman	Associate Director, Marrons Planning
Jon Golby	Director, Golby and Luck
Josef Saunders	Director, Ecology Solutions
Anna Cartledge	Partner, Shakespeare Martineau
Joshua Morley	Solicitor, Shakespeare Martineau
Lee Harris	Chief Executive Officer, Springbourne Homes

FOR THE COUNCIL

Tim Hartley	Team Leader
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INTERESTED PARTIES

Mary Sherwin	Burbage Parish Council
Claire King	Local resident