The Planning Inspectorate

Appeal Decision

Inquiry held on 8 and 9 February 2011
Site visit made on 10 February 2011

by John Chase MCD Dip Arch RIBA MRTPI

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

Decision date: 11 March 2011

Appeal Ref: APP/K2420/A/10/2136529
Land north of Mill Lane, Earl Shilton, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Persimmon Homes North Midlands Ltd against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 10/00401/FUL, dated 20 May 2010, was refused by notice dated 6 September 2010.
- The development proposed is residential development of 200 units, together with associated landscaping and access.

Procedural Matters

1. An undertaking made in accordance with Section 106 of the Town and Country Planning Act 1990 has been submitted, to provide for affordable homes, maintenance of the common parts of the estate, and contributions to infrastructure. It is worded with the intention that the obligations should apply only where they meet the requirements of the tests in the Community Infrastructure Levy (CIL) Regulations 2010.

2. Drawing No 1580-500E has been substituted for the application version, showing additional details at the Thurlaston Lane junction. This drawing does not materially alter the nature of the scheme, and has been included in the consideration of this appeal.

Decision

3. The appeal is dismissed.

Main Issue

4. The third reason for refusal in the Council's decision notice refers to highway considerations. Whilst matters of road safety remain a concern of local residents, which will be discussed below, this part of the reason for refusal is no longer pursued by the Council in light of the provisions for off-site highway and access works. Other aspects of the reason for refusal can be adequately dealt with in the more general discussion of infrastructure requirements. Therefore, taking account of the representations and evidence, it is considered that the main outstanding issue is whether the development would undermine the emerging proposals for an urban extension, including the provision of the necessary infrastructure and, if so, whether the harm would be outweighed by the need for housing land in the area.

Reasons

The effect on proposals for the urban extension

5. The site is outside the settlement boundary defined in the Hinckley and Bosworth Local Plan (LP), adopted 2001, where policies of restraint apply, including RES5 and NE5. The land is part of the open agricultural area around Earl Shilton, and its development would be an incursion into the rural area, contrary to both national and local policy to protect the countryside for its own sake. However, Policy 2 of the Council's Core Strategy (CS), adopted 2009, identifies land to the south and east of Earl Shilton as the location of a Sustainable Urban Extension (SUE) and, whilst the detailed boundaries of that extension are to be set within the emerging Earl Shilton and Barwell Action Area Plan (AAP), there is no indication that the appeal site would fall outside its limits. In addition, the current proposals in the AAP, and the location of the site adjoining existing residential areas, on the periphery of the SUE, point to its use for housing. The principle of the development of the site is largely accepted, and any lack of conformity with the Local Plan is outweighed by the more recent provisions of the Core Strategy.

6. The appellants also contend that the scheme design is consistent with the spatial vision in the emerging AAP. Attention is drawn, amongst other matters, to the quality and mix of sustainable housing, including an affordable component, to the provision of cycle and footpath routes, and to the distribution of green space and recreational areas. Whilst the AAP is currently passing through its consultation process, the master plan proposals that it contains have already been subject to several phases of public scrutiny and involvement. Despite the draft status of the AAP, including the design guidance in Appendix 3, there is adequate reason to give significant weight to the layout of the SUE as it affects the site, and there is no substantial case to show that the appeal scheme would be inconsistent with it.

7. However, additional facilities will be required to support the SUE. CS Policy 2 includes the expectation that developer contributions will assist in providing the necessary infrastructure, and Policy 5 sets out a range of transport measures that will be required. Details of the proposals will be set out in the AAP, the draft version of which makes reference to community and sporting hubs, including a primary school and recreational facilities; utility services; green spaces; and, a range of transport measures, including pedestrian, bus and cycle facilities, and improved linkages and capacity on the highway network. The infrastructure plan for the SUE will be prepared in parallel with the spatial arrangements, the intention being to present the proposals for public consultation in the summer of 2011, with adoption in 2012.

8. The appeal proposal goes some way towards meeting the identified infrastructure requirements, including the provision of an extended bus service, traffic calming on existing roads, foot and cycle paths, and on-site recreational space. Contributions are also made towards several public services. However, other requirements, including those relating to the wider highway network, educational facilities, and improved utility services, have not been included. The Council claim that it is not possible to calculate contributions for the overall infrastructure scheme, in view of the preliminary nature of the proposals for the SUE. There is also a concern that a number of the contributions which have been offered would not meet the CIL Regulations tests through lack of supporting evidence. The deficit would be likely to result in a greater burden

on later development, contrary to the integrated concept of the urban extension, and raising the prospect of a shortfall in the funding of necessary infrastructure, or reduced commercial viability. It is considered that these are valid concerns.

9. Whilst it is recognised that some of the contributions being offered with this scheme represent a significant proportion of the total cost of the facilities being provided, in the absence of an infrastructure plan, it is not possible to conclude that these would represent a fair proportion of the overall cost. Nor may significant weight be given to the possibility that the Council would benefit from a contribution from the New Homes Bonus scheme, there being no indication that this is intended as a substitute for necessary infrastructure provision.

10. The appellants' concern about the likelihood of delay in the programme for the preparation of the AAP is noted, especially as it has slipped by over a year since the Inspector reported on the CS in 2009, and there is a lack of information about progress towards highways and utilities provision, including the future of the existing sewage treatment works. These are significant points. Nonetheless, there is no clear indication that the programme will not be met, and, as discussed below, there is the prospect of some flexibility in the granting of planning permissions, depending on the stage reached. Reference has also been made to the absence of objections to this proposal from other developers with interests in the SUE, but there are alternative explanations for this lack of response, and no clear conclusions may be drawn from it.

11. CS Policy 2 indicates that all proposals must be in conformity with the Action Area Plan, and that no piecemeal development will be allowed. There was some debate at the Inquiry about the meaning of this latter provision, in light of the CS Inspector's observations that the AAP programme was ambitious, and the early release of land might be necessary to meet short term housing needs. Taking the wording of the policy and the Inspector's report together, it would be reasonable to assume that piecemeal development in this context is that which does not conform to the AAP, but that there may be circumstances where the emerging plans would provide sufficient information to make the assessment. The Council acknowledged this position during the Inquiry, suggesting that a scheme might be allowed once the infrastructure proposals have been subject to public consultation. However, as things stand, there is insufficient detail about the infrastructure provision to allow a realistic assessment and apportionment of costs. This is a significant component of the information necessary to meet the objectives of the AAP, and, in its absence, it is not possible to confirm that the appeal scheme conforms to the plan. There are adequate grounds to consider that the proposal represents piecemeal development in terms of Policy 2.

12. It is fundamental to the justification of the development of this land outside the existing settlement that it forms part of the SUE. As such, it should make provision for an apportionment of infrastructure costs. This is an implicit objective of CS Policies 2 and 5, and the emerging AAP, and would be consistent with LP Policy IMP1. The Council's intentions reflect the objective of Circular 05/2005 for a planned approach to the imposition of obligations and, whilst any requirement for contributions would be subject to meeting the other provisions of the Circular, along with R. 122 and 123 of the CIL Regulations, there is not evidence to show that compliance would not be possible. In addition, LP Policy BE1 includes the requirement that development of a site should not be prejudicial to the comprehensive development of the larger area

of which it forms a part. The proposal would not be in accordance with these requirements, being the piecemeal development discouraged by CS Policy 2. It is concluded that the development would undermine the emerging proposals for an urban extension, in relation to the provision of the necessary infrastructure.

The need for housing in the area

13. The East Midlands Regional Plan (EMRP), adopted 2009, sets the objective of providing land for 9000 houses in the Borough between 2006 and 2026. Whilst it is the Government's intention to revoke the Regional Strategies in due course, the EMRP housing targets are carried into the Core Strategy, and there is no indication that the Council are proposing alternative housing numbers, nor that the SUE proposals will be affected by the revocation. In addition, CS Policy 15 sets the requirement for 2090 affordable homes by 2026, and it is indicated that the performance to date has fallen short of this objective.

14. The main parties are agreed that there is currently a 3.92 years supply of deliverable sites against the EMRP targets, falling below the five year level specified in para. 71 of Planning Policy Statement 3 (PPS3). This would entitle the proposal to favourable consideration, which would be reinforced by the provision of 40 affordable dwellings. However, the application of para. 71 is subject to other policies in the PPS, including para. 69, setting out the criteria to be used in an assessment. The majority of these would be satisfied, as the scheme conforms to the layout proposals of the emerging AAP, and to CS policies concerning a range of issues, including density, mix and design. However, para. 69 also refers to consideration of whether the development would undermine wider policy objectives which, in this case, would include the integrity of the infrastructure proposals for the SUE.

15. Running alongside the requirement in PPS3 for a flexible approach to the supply of land, is the recurrent theme of the need to take a planned approach to the delivery of housing, including the provision of the necessary infrastructure. This, as well as the policy support in the development plan for comprehensive treatment of the SUE, and the progress towards detailed proposals in the AAP, indicate that the wider policy objective should, in this instance, take precedence over the benefit of contributing to the five year housing requirements. This is not solely a matter of prematurity, to which para. 72 of PPS3 refers, but relates to the effect of piecemeal development on the planning of the larger area. It is concluded that the harm caused by undermining the emerging proposals for the urban extension would not be outweighed by the need for housing land in the area.

Section 106 Undertaking

16. The Unilateral Undertaking makes provision for the maintenance of the balancing pond and the open areas on the site, along with contributions towards improvements of existing roads that would be affected by the increased traffic arising out of the development, and the extension of the speed limit adjacent to the site. In addition, a contribution towards the extension of bus services is made, to enable a public transport link adjacent to the new housing. The County Council have expressed concern about the enforceability of the Undertaking, and whether the service would remain financially viable in the long term. However, the appellants have done all that is reasonably practicable in the circumstances to provide the necessary public transport improvements, and Circular 05/2005 makes clear that pump priming funds of

this sort should not be required in perpetuity. It is considered that this measure would encourage non-car modes of transport and that it, along with the preceding obligations, would be necessary if the development were to proceed.

17. The Undertaking also makes contributions towards police, civic amenities, health services, and libraries. It is likely that improvements of these facilities will be necessary in order to serve the increased population of the SUE. However, the Borough Council have expressed the view that there is insufficient evidence to support the need for the contributions in relation to the impact of the development in isolation. This is a valid concern, especially in those cases where there is not adequate indication that the need for contributions is supported by adopted Development Plan Documents, nor that they relate to a fair proportion of a costed programme of work. To the extent that the contributions do not meet the recommendations of Circular 05/2005, and the tests in the CIL Regulations, weight cannot be attributed to them.

Other Matters

18. Local residents have expressed concern about the impact of the development on the local road system, including the portion of Mill Lane adjacent to St Peter's Primary School. It is accepted that this area becomes congested with parked cars at certain times of the day, and that the road is relatively narrow and winding. Nonetheless, the Highway Authority are satisfied that the contribution towards road improvement measures would overcome any loss of safety arising out of the increased traffic, and there is not compelling evidence for this decision to come to a different view. Some of the other matters raised are those related to the principle of development of the site, which has formed part of the consultation process of the CS, and master plan component of the AAP. With respect to the impact on neighbouring residents, it is recognised that construction of housing on the farmland will lead to a change in the character of the area. However, this would not amount to an unacceptable loss of amenity, and the layout of the estate takes adequate measures to avoid harm to the living conditions of those with houses alongside the site. These, and the other matters raised, do not amount to additional reasons to dismiss this appeal.

Conclusions

19. Despite the appellants' willingness to provide the planning obligations referred to above, and the absence of harm arising out of the other matters identified, the conclusions on the main issue indicate that the appeal should be dismissed.

John Chase

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Hunter of Counsel	Instructed by Hinckley and Bosworth Council (HBBC) Senior Legal Officer
He called	
Ms T Miller MATP, MAUD, MRTPI	Planning Department, HBBC
Mr R Crosthwaite BA, DipTP, MRTPI	Planning Department, HBBC
Mr L Fallon BA, BTP, MRTPI	Transport Planner, Leicestershire County Council (LCC)

FOR THE APPELLANTS:

Mr I Dove QC	Instructed by Pegasus Planning Group
He called	
Mr G Lees BA, BTP, MRTPI	Pegasus Planning Group
Mr C Shields BA, MSc, CEng, CEnv, MICE	WYG Transport Planning

INTERESTED PERSONS:

Mr P Hunt	Solicitor, on behalf of the appellants
Mr J Pendergrast	LCC
Mr N Thomas BLib, MCLIP, DPLM	LCC
Mr I Braker	LCC
Chief Insp S Chivers	Leicestershire Police
Cllr D Gould	Borough Councillor
Mr B Underwood	Chairman of Governors, St Peter's School
Mr P Stacey	Local resident
Mr W White	Local resident

DOCUMENTS

1 Notice of time and venue of appeal with circulation list
2 List of appearances on behalf of the Council
3 Opening on behalf of the Council
4 Opening on behalf of the appellants
5 Certified copy of Section 106 Undertaking
6 Drawing No 1580-500E
7 Opinion: application of procurement law to bus subsidies
8 Extract from Community Infrastructure Levy Regulations 2010
9 Bundle of emails and meeting notes concerning bus service contribution
10 Memorandum of agreement between Centrebus and Persimmon Homes
11 Cost and revenue schedule of bus service

12 Email dated 1/2/11 from Mr D Shelley to Mr C Shields
13 Schedule of steps taken to negotiate Section 106 contributions
14 Correspondence between Mr P Hunt and Leicestershire Police
15 Schedule of planning application drawings
16 Proof of evidence of Mr N Thomas
17 Proof of evidence of Mr I Braker
18 Notification of contributions required for library services
19 Statement of common ground
20 Consultation Master Plan, October 2010
21 Schedule of suggested conditions
22 Revised schedule of suggested conditions
23 Closing submissions on behalf of the Council
24 Closing submissions on behalf of the appellants