

Town and Country Planning Act 1990 – Section 78

Town and County Planning (Development Management Procedure) (England)
Order 2015

Town and Country Planning (Inquiries Procedure) (England) Rules 2002

**Appeal by David Wilson Homes East Midlands and
Anthony Raymond Shuttlewood**

Land at Cossington Road Sileby

Against the refusal of outline planning permission by Charnwood Borough
Council for application P/21/0491/2

*“Outline planning application for up to 170 dwellings (including affordable
housing) with all matters reserved other than access together with associated
landscaping and other infrastructure.”*

Statement of Case

November 2021

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Appendix 1: Justification for a Public Inquiry

1. Introduction

Context

- 1.1 This Statement of Case is submitted by David Wilson Homes East Midlands and Anthony Raymond Shuttlewood ('the Appellant') and relates to an appeal against the decision by Charnwood Borough Council ('CBC' or 'the Council') to refuse an outline planning application (Ref: P/21/0491/2) for the residential development of Land off Cossington Road, Sileby, Leicestershire ("the appeal site").
- 1.2 The outline planning application ("the application") was submitted in January 2021 and sought the development of:
- "up to 170 dwellings (including affordable housing) with all matters reserved other than access together with associated landscaping and other infrastructure."*
- 1.3 The Appellant is firmly of the view that a Public Inquiry is the most appropriate procedure in which to test the matters in dispute between the main parties. A justification for this request is provided in accordance with the PINS Procedural Guidance (Annexe K – March 2021) at **Appendix 1**.
- 1.4 Further to the above, it is requested that following openings, the Inquiry is adjourned to enable the accompanied site visit to take place. It is considered that this will better facilitate examination of the key issues relating to the appeal and will save Inquiry time. The Council are in agreement with this position.
- 1.5 This Statement of Case is supported by a draft Core Documents list which currently comprises the original planning application documents, supplementary documents that were submitted during the determination stage, statutory consultee responses, the Officers Report, the Decision Notice, relevant policy documents and other relevant decisions/judgements. The Appellant will seek to agree a final Core Documents list with the Council.
- 1.6 The Appellant has also prepared a draft Planning Statement of Common Ground (SoCG) on Planning Matters. A separate draft Landscape Statement of Common Ground has also been prepared and is submitted with this Statement of Case.

Appeal Site and Surroundings

- 1.7 A full description of the appeal site and its surroundings is set out in the draft Planning Statement of Common Ground and draft Landscape Statement of Common Ground for agreement with the Council. Further details on the site context are provided in the Design and Access Statement (CD1.16) and the Planning Statement (CD1.11).

Background to the Application

- 1.8 The application, the subject of this appeal, was made in March 2021 following pre-application engagement, which is summarised within the Statement of Community Involvement (CD1.12). The application was supported by a comprehensive suite of technical reports (CD1.01-CD1.16). These were supplemented by various documents (CD2.01-CD2.08) provided at the post submission stage in response to matters raised by either statutory consultees or Officers.
- 1.9 The application was refused, by delegated powers, on the 27th September 2021 (CD5.01). The Officer's Report ("the OR") is provided at CD5.02.. The Decision Notice (CD5.01) sets out the following reasons for refusal:

- 1. The local planning authority is of the opinion that the proposal would lead to the loss of an Area of Local Separation resulting in a significantly narrowed and reduced actual and perceived gap of open undeveloped land between the villages of Sileby and Cossington contrary to Core Strategy Policy CS11 and the saved policy CT/4 in the adopted Borough of Charnwood Local Plan. The resulting harm would also have a significant harmful impact to the character of the countryside and the separate identities of the villages of Sileby and Cossington which is well documented in Council studies and assessments. This would be contrary to interests of the well established planning policies, and emerging policies in the draft Charnwood Local Plan, to prevent the coalescence and merging of villages in the Soar Valley. This significant adverse impact is considered to significantly and demonstrably outweigh the benefits of allowing the development because of the harmful effect it would have on the purpose and integrity of the Area of Local Separation and would undermine its continuing planning function.*

To approve the development would be contrary to Policies CS1 and CS11 of Charnwood Core Strategy, 'saved' Policies ST/2, CT/1 and CT/4 of the Charnwood Local Plan, Policies G1 and G2 of Sileby Neighbourhood Plan, and the aims and objectives of the National Planning Policy Framework. In

combination these harms are considered to significantly and demonstrably outweigh the benefits of the scheme when taken as a whole.

2. *The development creates demand for open space, education provision and healthcare services which cannot be met by existing services. Additionally there is a need to secure affordable housing and an appropriate mix of type tenure and size of home in order to ensure that the proposal complies with development plan policy CS3. Notwithstanding the submitted Heads of Terms these matters have not been secured by way of a Section 106 Legal Agreement at this time. Accordingly the development fails to comply with policies CS3 and CS24 of the Development Plan and would lead to significant and demonstrable harm which would outweigh the benefits of the scheme.*

1.9.1 Reason for Refusal 2 pertains to the absence of a completed legal agreement. The application was submitted with draft Heads of Terms (CD2.07). An agreed draft Planning Obligation will be provided to the Inspector in accordance with the bespoke programme prior to the Public Inquiry. The OR recorded:

"A S106 legal agreement could be agreed and as such the potential impact on services and facilities in the area can be mitigated. However, at this current time, in the absence of a completed legal agreement, it must be concluded that the proposal does not provide the necessary infrastructure to meet policy CS24. Additionally, although the applicant is willing to provide a policy compliant level of affordable housing the mechanism to achieve this, (the Section 106 legal agreement), is not currently in place to secure its delivery. Accordingly, a reason for refusal around this is suggested. It is important to note that in the event of the appeal progressing, a section 106 legal agreement could be drawn up and if this is the case, this reason for refusal would fall away."

1.10 As such it is not anticipated that RfR2 will be a main issue for the appeal.

1.11 Without prejudice to the outcome of the Appeal, the Appellant will also seek to reach agreement with the Council on a list of planning conditions in advance of the Public Inquiry.

2. The Development Plan

2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. This is reaffirmed at Paragraphs 2, 12 and 47 of the National Planning Policy Framework (the 'Framework').

2.2 The relevant statutory Development Plan for the appeal comprises:

- Saved Policies of the Charnwood Local Plan 2004 (CLP) (adopted January 2004) (CD6.01)
- Charnwood Local Plan 2011 to 2028 Core Strategy (CCS) (Adopted November 2015) (CD6.02)
- Sileby Neighbourhood Plan (SNP) (Made in January 2020) (CD6.11)

2.3 It is agreed, as evidenced through the Officer's Report (CD5.02) that Saved Policies of the Charnwood Local Plan 2004 and the Charnwood Local Plan Core Strategy 2011 to 2028 are now more than five years old. Further, the Neighbourhood Plan reflects a housing requirement in conflict with up-to-date government guidance on assessing Local housing Need through the Standard Methodology. The appellant will demonstrate that key policies are out-of-date and that the weight attached to them must be reduced.

2.4 The Appellant will assess the relevant provisions of the Development Plan, including its consistency with current national policy, in evidence.

2.5 The most important policies for the determination of the Appeal are considered to comprise:

- Core Strategy Policy CS 1 (Development Strategy)
- Core Strategy Policy CS 11 (Landscape and Countryside)
- Saved Local Plan Policy ST/2 (Limits to Development)
- Saved Local Plan Policy CT/1 (General Principles for Areas of Countryside, Green Wedge and Local Separation)
- Saved Local Plan Policy CT/4 (Development in Areas of Local Separation)
- Sileby Neighbourhood Plan Policy G1 (Limits to Development)
- Sileby Neighbourhood Plan Policy G2 (Design)

3. Other Material Considerations

National Planning Policy Framework (NPPF)

- 3.1 The Appellant will demonstrate that, having regard to the proper application of the Framework, the appeal proposal benefits from the presumption in favour of sustainable development under Paragraph 11 of the Framework.

National Planning Practice Guidance (PPG)

- 3.2 The Appellant will refer to relevant elements of the PPG as required within evidence.

Housing Land Supply

- 3.3 As of March 31st 2021, the Council claimed a 3.34 year supply (**CD6.12**) based on a local housing need, calculated using the Standard Method (currently 1,111dpa; excluding any unmet need from Leicester City). This position has been confirmed through recent appeal decisions in Charnwood Borough.
- 3.4 The lack of a five year housing land supply renders the policies which are most important to the determination of this Appeal out of date and consequently, the appeal should benefit from the presumption in favour of sustainable development under Paragraph 11d of the Framework (the 'tilted balance'). Furthermore, the requirement to demonstrate a five year housing land supply is a minimum; it is not a ceiling beyond which sustainable development should be resisted in principle.

Emerging Planning Policy

- 3.5 The Borough Council is currently advancing a new Local Plan; Charnwood Local Plan 2021-37 (**CD6.03**). The Council most recently consulted on its Regulation 19 draft in July/August 2021.
- 3.6 The Appellant will consider in evidence the implications of the emerging Local Plan and the weight given to relevant policies in the emerging Local Plan, in accordance with Paragraph 48 of the Framework.

Other Policy and Evidence Base Documents

- 3.7 The Appellant will refer to the following documents as appropriate in evidence:
- Green Wedges, Urban Fringe Infrastructure Enhancement Zones and Areas of Local Separation, ARUP, (March 2016 and Addendum May 2019)

- The Charnwood Landscape Capacity and Sensitivity Assessment Addendum, LUV, (February 2021)
- The Charnwood Landscape Sensitivity Assessment, Charnwood Borough Council Officers, (July 2021)

3.8 The above documents will be included within the Core Documents list with the Council's agreement.

3.9 The Appellant may refer to other planning applications, appeal decisions and case law where relevant to the appeal proposal. These will be agreed with the Council and copies will be provided as Core Documents.

4. Applicant Response to Reasons for Refusal

Introduction

4.1 This section of the Statement of Case sets out the Appellant's position in relation to the Council's Reasons for Refusal.

4.2 Whilst the Inspector is, of course, entitled to determine the appeal *de novo* it is emphasised that the Council is required to clearly state the reasons why it refused planning permission. Section 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) states that:

"(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision".

4.3 Accordingly, it is inferred that the Council raises no other technical or policy objections to the appeal proposal.

Reason for Refusal 1

4.4 RfR1 alleges that the appeal proposal would lead to loss of an Area of Local Separation resulting in a significantly narrowed and reduced actual and perceived gap of the undeveloped land between the villages of Sileby and Cossington which would have a significant harmful impact to the character of the countryside and separate identities of the villages. RfR1 considers this a significant adverse impact, significantly and demonstrably outweighing the benefits of the development.

4.5 In assessing the application the Council have failed to properly distinguish between the issues of landscape character and visual amenity and those raised by the Area of Local Separation policies. In evidence the Appellant will assess the status of the appeal site in landscape terms as well as considering the Area of Local Separation and whether the proposal conflicts with Core Strategy Policy CS11, Saved Local Plan Policies CT/1 and CT/4 and Neighbourhood Plan Policy G2. This will also consider the emerging evidence base referred to above.

- 4.6 It will be demonstrated that the appeal proposal maintains the separate character and identities of Sileby and Cossington through the delivery of extensive open space between the settlements in a qualitative sense and reinforcing the character edge of Sileby and thereby actively reinforcing the gap.
- 4.7 It will also be demonstrated that the appeal proposal creates the opportunity to enhance the planting within the site to better reflect the characteristics of the wider countryside in this location whilst providing new vistas on land which is not currently accessible to the public. For these reasons it will be illustrated that the proposal meets relevant policy requirements.
- 4.8 The Appellant will also consider the role of Sileby within the identified settlement hierarchy, demonstrating that it is an accessible and sustainable location for new housing. Evidence will also consider housing need in Sileby, historic delivery to meet and identified need and the future growth proposed through the emerging Local Plan. The Appellant will demonstrate that contemporary housing developments are part of the character of Sileby.
- 4.9 It is agreed that the Council is unable to demonstrate a five year housing land supply and consequently, the relevant policies of the Development Plan are out of date and the 'tilted balance' under Paragraph 11d of the Framework is engaged. The Council accepts that its housing policies set out in the Core Strategy, and the Sileby Neighbourhood Plan are also out-of-date as they are based on requirements derived from the Leicester and Leicestershire Strategic Housing Market Assessment (SHMA) 2014 and Leicester and Leicestershire Housing and Economic Development Needs Assessment (HEDNA) 2017 respectively. Accordingly, the tilted balance is engaged irrespective of the overall housing land supply position.
- 4.10 The Appellant will demonstrate that the Appeal Site is not subject to any policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing planning permission. Furthermore, the Appellant will demonstrate that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the appeal proposals, when assessed against the policies in the Framework taken as a whole.
- 4.11 The weight to be given to the benefits arising from the appeal proposals will be set out in evidence. It will be demonstrated that any impacts on the character and appearance of the area is clearly outweighed

by the identified benefits and accordingly, the overall planning balance clearly lies in favour of the appeal being allowed. The identified benefits will include (but are not necessarily limited to):

- The provision of market housing in a location with an identified need, where the Council is unable to demonstrate the minimum five year housing land supply;
- The provision of affordable housing in a location where the affordability of housing is higher than the East Midlands average, and the Council's own Housing Need Assessment (September 2020) confirms an increase in affordable housing need from 392 dwellings per annum in 2017 to 476 dwellings per annum in 2020;
- The provision of new publicly accessible green infrastructure providing access for existing residents to the south of Sileby to extensive open space;
- The opportunity to deliver new planting to, over time, replace existing planting to better reflect the characteristics of the wider landscape;
- The opportunity to positively enhance the edge of Sileby with features that the Council have identified as contributing positively to its character;
- Biodiversity net gains of circa 38.68% net gain in respect of habitat creation and 73.87% for hedgerows;
- Delivery of a new, high quality, sensitively designed edge to the settlement;
- The provision of family housing within walking distance of Primary Schools;
- Economic benefits in respect of construction and supply-chain logistics as well as retaining local spend, contributing to the economic dimension of sustainable development. The increase in local expenditure will help to sustain local facilities and services together with local authority benefits including New Homes Bonus payments and Council Tax revenues.

4.12 On this basis, the Appellant will respectfully request that the appeal is allowed.

Reason for Refusal 2

4.13 RfR2 pertains to the absence of a completed legal agreement, citing Policies CS3 and CS24 of the Core Strategy. The application was submitted with draft Heads of Terms. An agreed draft Planning Obligation will be provided to the Inspector in accordance with the bespoke programme prior to the Public Inquiry.

Sitting Day and Witnesses

- 4.14 At this stage it is considered that the Inquiry will require four sitting days. Counsel for the Appellant intends to call two witnesses covering:
- Landscape Character and Visual Impact
 - Area of Local Separation
 - Planning Policy and the overall Planning Balance
- 4.15 In addition to the Council's reasons for refusal, the Officers Report states that 146 letters of objection from 124 households were received by the Council during the statutory consultation period on the planning application. The Appellant reserves the right to respond further in evidence on receipt of the Appeal Questionnaire if necessary and call on additional witnesses to respond to any Rule 6 matters.