The Planning Inspectorate

Appeal Decision

Inquiry held on 21, 23 and 25 March 2022 and 4, 27, 28 and 29 April 2022

Site visit made on 29 March 2022

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/X2410/W/21/3287864
Land East of Cossington Road, Sileby

- 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 David Wilson Homes and Anthony Raymond Shuttlewood against the decision of Charnwood Borough Council.
- The application Ref P/21/0491/2, dated 2 March 2021, was refused by notice dated 17 September 2021.
- The development proposed is up to 170 dwellings (including affordable housing) with all matters reserved other than access / means of access together with associated landscaping and other infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for up to 170 dwellings (including affordable housing) with all matters reserved other than access / means of access together with associated landscaping and other infrastructure at Land East of Cossington Road, Sileby in accordance with the terms of the application, Ref P/21/0491/2, dated 2 March 2021, subject to the 19 conditions set out in the schedule below.

Preliminary Matters

2. The original application was made in outline with all matters reserved apart from access. Approval is only sought at this stage for the access point onto Cossington Road, the details of which are shown on a specific plan. All other matters relating to access, including internal circulation, would be determined at the reserved matters stage. I have had regard to the illustrative masterplans submitted with the application (ref GL1400 13 and 13A) but consider that all the details shown are indicative only with the exception of the access point.

3. During the Inquiry, the appellants submitted a parameter plan[1] showing the general extent of land proposed for built development and the general extent of land for open space proposed for public access, storm water attenuation and structural landscaping. The main parties had no objection to the parameter plan forming part of the formal application plans for this proposal. The plan has not been subject to public consultation. However, it is consistent with the illustrative masterplans with regard to the extent of built development. It also provides greater clarity in assessing the proposed development. Therefore, I have considered the plan as part of my assessment.

[1] Inquiry Document 9 ref GL1400 18

4. In addition to the formal site visit on 29 March 2022, I also saw the site and surrounding area on 18 March 2022. A completed and executed Section 106 agreement (S106) was submitted by the appellants shortly after the Inquiry closed. This is assessed below.

5. Appeal documents were not initially available online following the start of the appeal. However, a second notification letter was issued to clarify the issue and an extension of time for appeal representations was provided. Therefore, I am satisfied that interested parties have not been prejudiced by this matter.

Main Issues

6. The main issues are as follows:

   (a) whether the proposed development would be in a suitable location having regard to the development plan and national policies;

   b) the effect of the proposed development on the character and appearance of the area in relation to landscape and the Area of Local Separation;

   c) whether or not the proposed development makes adequate provision for affordable housing and other infrastructure requirements; and

   d) whether or not any conflict with the development plan and harm arising is outweighed by other considerations.

Reasons

Policy context

7. Policy CS1 of the Charnwood Core Strategy 2015 (CCS) sets out a development strategy and settlement hierarchy for the borough. Sileby is designated as a Service Centre by this policy due to the range of services and facilities that exist within the settlement, including primary schools, employment opportunities, shops, doctors' surgeries, recreation and leisure facilities, and regular public transport to larger settlements by bus and train. The policy seeks at least 3,000 new homes within and adjoining the Service Centres and aims to respond positively to sustainable development which contributes towards meeting development needs, supports the strategic vision, makes effective use of land and is in accordance with the policies elsewhere in the CCS.

8. Policy ST/2 and the Proposals Map of the Charnwood Local Plan 2004 (CLP) identify Limits to Development for various settlements in the borough. The policy seeks to confine built development to allocated sites and other land within the Limits to Development subject to specific exemptions set out elsewhere in the CLP. The Sileby Neighbourhood Plan 2018-2036 (SNP) also sets out defined Limits to Development for the settlement. Land outside these limits is treated as open countryside by SNP Policy G1, where development will be carefully controlled in line with local and national strategic planning policies. The policy also sets out a number of examples of appropriate development in the countryside.

9. CLP Policies CT/1 and CT/4 and the Proposals Map identify Areas of Local Separation (ALS) between specific settlements including one between Sileby and Cossington. Policy CT/1 states that development within these areas of generally open land will be strictly controlled and limited to specific types of development. CLP Policy CT/4 states that development acceptable in principle

in ALS (as set out in Policy CT/1) will only be permitted where the location, scale and design of development would ensure that the predominantly open and undeveloped character of the area is retained and the already narrow gap between settlements is not reduced.

10. CCS Policy CS11, amongst other things, requires new development to protect landscape character and maintain the separate identities of towns and villages. The policy also seeks to protect the predominantly open and undeveloped character of ALS unless new development clearly maintains the separation between the built-up areas of these settlements. SNP Policy G2 requires new development to enhance and reinforce the local distinctiveness and character of the area in which it is situated.

11. The emerging Charnwood Local Plan 2021-2037 (ELP) was submitted for examination in December 2021. The parties agree that it can only be afforded limited weight for this appeal. Nevertheless, the ELP seeks to maintain Sileby's status as a Service Centre and maintain and enlarge the ALS. A review of the SNP has commenced but it remains at a relatively early stage of production.

12. Paragraph 174 of the National Policy Framework (NPPF) requires development to contribute to and enhance the natural and local environment by following a number of criteria including (a) protecting and enhancing valued landscapes and (b) recognising the intrinsic character and beauty of the countryside.

Main issue (a): The suitability of the location

13. The appeal site lies on the southern edge of Sileby and adjoins the Limits for Development. It is also located within the ALS between Sileby and Cossington. The proposed development does not meet any of the specific exceptions set out in CLP Policy CT/1 or SNP Policy G1 and so would be in conflict in principle with both policies. The development would also conflict in principle with CLP Policies ST/2 and CT/4.

14. This conflict should be seen in the context of the housing requirements for the CLP being lower than they are now, as the CLP is based on the Leicestershire Structure Plan adopted in 1994. A number of housing developments have been permitted around Sileby beyond the Limits to Development in the CLP, while housing has also been permitted within ALS elsewhere in the borough. Additionally, the SNP reflects the housing requirement in the CCS which is more than 5 years old.

15. The conflict also needs to take account of CCS Policy CS11 which does not restrict development based on its location and form. Instead, the policy applies a more nuanced approach to assessing development in the countryside including within ALS. Moreover, NPPF paragraph 174 sets out a more flexible approach to development in the countryside.

16. With regard to CCS Policy CS1, around 4,500 homes have been committed to in the Service Centres already between 2011 and 2021, with over 1,000 homes in Sileby alone. The target in the policy is not a ceiling and there is no evidence to suggest that simply going beyond the stated figure is unacceptable. Sileby performs well in terms of services and facilities compared to other Service Centres according to the Settlement Hierarchy Assessment. Additional housing allocations for the settlement are proposed in the ELP. The proposed development accords with CCS Policy CS1 insofar as it relates to housing

adjoining a Service Centre. As to whether it constitutes sustainable development will depend on the assessment of the proposal below.

17. In summary, the development conflicts in principle with CLP Policies ST/2, CT/1 and CT/4 and SNP Policy G1 due to its location and form. However, any conclusion on whether or not the development would be in a suitable location having regard to the development plan and national policies depends on the consideration of the remaining main issues.

Main issue (b): Character and appearance

Landscape and visual character

18. The appeal site is situated within the Soar Valley Landscape Character Area (LCA) in the Council's Landscape Character Assessment 2012 and forms part of the wider Trent Valley Washlands National Character Area (NCA). Both landscape character areas incorporate flat wide river flood plains and rising valley slopes that contain arable and pastoral farmland as well as settlements like Sileby. The NCA guidance advises that new built development should be located within existing settlements and avoid the valley floors and bordering slopes. The LCA guidance seeks to direct development away from prominent locations on the valley slopes. The LCA is defined as having a moderate landscape character strength and condition, where the strategy is to conserve and enhance.

19. Cossington Road forms the site's western boundary and provides vehicular and pedestrian access between Sileby and Cossington. Public footpath 147 to the south-west of the site provides an alternative pedestrian route between the two settlements. The Midland Mainline railway line embankment borders the site's eastern boundary. The northern boundary contains suburban housing along Chalfont Drive and other streets. The site's southern boundary comprises historic buildings at Brook Farm and vegetation that screens Derry's Nursery and Cossington Brook. Ribbon development along the western side of Cossington Road extends from Chalfont Drive almost as far as Brook Farm.

20. The site comprises a large open arable field that gradually rises from Cossington Road to the railway embankment. Historic map evidence indicates it was previously subdivided into smaller fields until at least the mid-20th century. From higher parts of the site, it is possible to see the wider countryside to the east and south, as well as long-distance views of the higher ground at Charnwood Forest to the west. There are glimpses of Cossington to the south from these higher parts but otherwise the neighbouring village is largely hidden from the site and its boundaries. The Council has recently resolved to grant planning permission for up to 130 dwellings on a large field immediately to the south of the brook and to the east of Cossington primary school (hereafter referred to as the Humble Lane scheme).

21. The site is highly visible travelling along Cossington Road including the parallel pedestrian footway due to the relatively low boundary hedge and the rising ground. The site is also very visible for passengers using the railway line. Part of the site is visible to the south-west from footpath 147 where it crosses the field between the brook and Cossington Road, through the gap in built form and vegetation on either side of the road.

22. Further to the south and south-west on the edge of Cossington, it is difficult to see the site at all due to intervening vegetation. From the Humble Lane railway bridge to the south-east, the site is glimpsed behind the brook vegetation in winter months. From higher ground to the east on Blackberry Lane and the Leicestershire Round recreational footpath, it is possible to see the site in front of existing housing on the edge of Sileby, although it is hard to distinguish given the long-distance view and existing vegetation.

23. The Council refers to a local setting of the site which provides a landscape backdrop to the site across three adjoining parcels of land[2]. These parcels vary in character and visibility. The land to the east of the railway line enables longer distance views over farmland and the wider countryside to the east and north-east. The land to the south, incorporating Derry's Nursery and the northernmost part of the adjacent field, is largely screened from the site by vegetation although glimpses through are possible in winter months. The land to the south-west consists of smaller pastoral fields crossed by footpath 147 between Sileby and Cossington that leads to Cossington Conservation Area and the listed parish church. Unlike the other two parcels, it is publicly accessible and provides an approach to and from the site, although intervisibility is restricted to the nearest field to Cossington Road.

24. There is disagreement between the parties as to whether the site and local setting constitute a valued landscape for the purposes of NPPF paragraph 174(a). Both parties have used guidance[3] from the Landscape Institute to assess this matter, including Technical Guidance Note 02/21 (TGN).

25. As set out in the TGN, the ALS designation between Sileby and Cossington is insufficient on its own to equate to valued landscape status because it is primarily a spatial planning tool. The site's rising valley slope and arable land use are characteristic of the LCA but are not particularly rare or distinctive features or functions in the surrounding area. The openness of the site is visually pleasing from Cossington Road but it is essentially a large modern field with no vegetation other than along the boundaries.

26. There is a visual, functional and probable historical relationship between the site and the buildings at Brook Farm, but nothing to suggest that this is significantly different to the relationship between fields and farm buildings elsewhere. The land to the south-west of the site is a more intimate patchwork of smaller pastoral fields crossed by public footpaths that form a backdrop to the aforementioned conservation area and the church. The site in contrast has no public access and it is difficult to discern the conservation area or church.

27. The land to the immediate south of the brook comprises part of another large and nondescript field, as well as nursery buildings, scrub and hard surfacing. The land to the east of the railway line shares many of the ordinary features and functions of the site itself. Therefore, while the land to the south-west of the site may exhibit qualities that equates it to a valued landscape, the site and the overall local setting do not.

28. The absence of a valued landscape does not mean that the site has no value in landscape or visual terms. It is evident that local people value the countryside

[2] As set out in Inquiry Document 10
[3] Core Document 6.25 Guidelines for Landscape and Visual Impact Assessment (Third Edition) and Core Document 6.28 Assessing Landscape Value Outside National Designations (Technical Guidance Note 02/21)

between Sileby and Cossington. The site has features characteristic of the NCA and LCA and its open undeveloped state is apparent from Cossington Road, the railway line and footpath 147. These qualities are tempered by the proximity of built development on two sides, but nevertheless the site can be afforded moderate value in landscape and visual terms.

29. The parameter plan and the illustrative masterplans indicate that the proposed built development would be confined to the northern half of the site, with a vegetation buffer between the housing and the railway line. The remainder of the site is intended to be used for public access and an attenuation pond with the potential for new and reinforced vegetation boundaries. The access point would utilise an existing field access opposite 184 Cossington Road and there could be a new footpath access into the site through the existing hedgerow.

30. While all matters are reserved apart from the access point, the development of up to 170 dwellings would result in the loss of an agricultural field and land use. The open rising valley slope would be eroded by built form in the northern half of the site. The landscaping and management of the public open space has yet to be agreed but it is likely that the introduction of footpaths and play space as suggested would create a peri-urban parkland landscape in the southern half of the site.

31. The changes would be highly visible from Cossington Road and the railway line given the current openness of the site. Views from the higher north-eastern part of the site across the surrounding countryside would be curtailed. From footpath 147, housing would intrude into the gap that currently exists between the ribbon development and Brook Farm. From more distant viewpoints to the south-west, south and east, the built development would be harder to discern behind existing vegetation boundaries and against the existing settlement edge. This includes the view from the Humble Lane railway bridge with or without the Humble Lane scheme.

32. The negative landscape and visual effects would be tempered by the urbanising influence of the existing housing to the north and west of the site. The increase in vegetation along the boundaries would lessen the impact from the different viewpoints over time. This has the potential to provide a more considered green edge to the settlement than the existing housing on Chalfont Drive even if the site would become more enclosed. There is no dispute that the design of individual houses could complement the existing adjoining housing in accordance with SNP Policy G2. The public open space could allow for a greater mix of grassland and meadow planting than the existing field, with the reintroduction of historic field boundaries. It would also increase public access to green space.

33. In summary, the development would result in harm to landscape and visual character from the loss of an open field on a rising valley slope contrary to CCS Policy CS11. However, the presence of existing housing lessens the harm and it can be mitigated by planting and access to green space. While the overall effect would not be beneficial, the mitigation would limit the harm caused to no greater than moderate.

Area of Local Separation

34. The site comprises a large part of the ALS on the eastern side of Cossington Road, which also includes Brook Farm and Derry's Nursery. The ALS continues

on the western side of Cossington Road following the edge of a footpath and field boundary. The narrowest part of the ALS is approximately 150m between the end of the ribbon development and the back garden of the first house in Cossington. The widest part is along the eastern edge of the site adjacent to the railway line. The ELP proposes to enlarge the western part of the ALS as far as the Leicestershire Round recreational footpath on the edge of Cossington Meadows Nature Reserve.

35. Travelling in either direction on Cossington Road, built form and open fields switch from one side of Cossington Road to the other. The site marks the edge of Sileby on the east side of the road, but ribbon development to west extends the settlement further south almost as far as Brook Farm. There is then built form at Brook Farm and dense vegetation screening Derry's Nursery to the east with open fields to the west. As the road bends past the nursery entrance, the buildings of Cossington come into view.

36. The village signs for Cossington and Sileby on Cossington Road are not a precise measure of where either settlement begins or ends. There is a perception of being in Cossington at the entrance to Derry's Nursery due to the presence of built form in that village. Conversely, there is little perception of being in Sileby until one is alongside the ribbon development and the existing housing at Chalfont Drive comes into view behind the site. Brook Farm and the dense roadside vegetation at Derry's Nursery act as a break between the two settlements on the east side of the road while fields do the same on the west side.

37. From footpath 147 heading north from Cossington, one moves through the western part of the ALS towards the narrow gap between the ribbon development and Brook Farm with the site beyond. Again, the arrival into Sileby is at the end of the ribbon development. In the opposite direction, the arrival into Cossington does not occur until you reach the church. From the railway line, Cossington is visible to the west across the fields either side of Humble Lane but appears quite separate from Sileby due to the vegetation along the brook and the lack of built development to the north and south of the brook.

38. The ALS has a staggered boundary and it is hard to appreciate the entire area in one location. Likewise, it is difficult to see Sileby from Cossington and vice versa due to intervening buildings and vegetation. However, the parcels of land on both sides of Cossington Road create a break in built development and allow people to appreciate the distinct identities and edges of Sileby and Cossington. Therefore, the ALS including the site performs an important role in maintaining separation between the two settlements with regard to an actual as well as perceived gap.

39. The narrowest gap of the ALS between Sileby and Cossington would not reduce as a result of the development. Nevertheless, the proposed area of built development would extend the edge of Sileby southwards by around 60m along the eastern side of Cossington Road and around 160m along the western side of the railway line. The actual amount of ALS would inevitably reduce.

40. Travelling along Cossington Road in either direction between Sileby and Brook Farm, it would be evident even with mitigation planting that the settlement edge of Sileby to the east of Cossington Road had moved southwards. From the northern end of footpath 147, the gap between the ribbon development and

Brook Farm would be lost in views heading towards Sileby. From the railway line, there would be a perception of an expanded settlement edge to Sileby along with an expanded settlement edge to Cossington in the event that the Humble Lane scheme was also implemented. Thus, the openness provided by the existing site would be diminished from all three route locations.

41. However, such perceptions would be limited to relatively short sections of road, rail and footpath. Further south of Brook Farm on Cossington Road, it would be difficult to appreciate any reduction in separation due to the bend in the road and existing vegetation and buildings at Derry's Nursery. The open fields opposite the nursery that form the western part of the ALS would remain. Likewise, further south on footpath 147, views towards Sileby would be obscured by field boundaries.

42. The proposed area of public open space would be perceived from the road and railway line and the footpath nearer to the road. The space would have a different character to the existing field, but it would retain a reasonably large gap between the proposed housing and Brook Farm as well as maintaining separation from the Humble Lane scheme if built. Users of the public open space would experience a peri-urban environment rather than open countryside but would still be able to appreciate a gap in built development.

43. In summary, there would be an actual and sizeable reduction in the amount of ALS contrary to CLP Policies CT/1 and CT/4. However, the perceptual reduction in ALS would be limited to relatively short sections of different routes while the public open space would retain a meaningful break in built form. The development would not be seen from Cossington and the separation between the two settlements would be clearly maintained. Therefore, while there would be some harm caused to the ALS, it would be no greater than moderate.

Conclusion on character and appearance

44. In conclusion, the proposed development would have a harmful effect on the character and appearance of the area in relation to the effect on landscape character and the physical reduction of the ALS. Therefore, it would not accord with CCS Policy CS11 (first bullet), CLP Policies CT/1, CT/4 and ST/2, and SNP Policy G1. Conversely, the development would maintain the separate identities of Sileby and Cossington and clearly maintain the separation between the built-up areas in accordance with CCS Policy CS11, while there would be no conflict with SNP Policy G2 in design terms. NPPF paragraph 174(a) is not applicable with regard to valued landscapes, but there would be some conflict with NPPF paragraph 174(b) in terms of the moderate harm that would be caused to the intrinsic character and beauty of the countryside.

Main issue (c): Infrastructure provision

45. CCS Policy CS24 seeks to ensure that development contributes to the reasonable costs of on site and, where appropriate, off site infrastructure. The Council has confirmed that the completed S106 resolves the second reason for refusal relating to infrastructure provision and the lack of a legal agreement. However, the appellants dispute the need to provide the education and healthcare contributions, disagreeing with the requirements of Leicestershire County Council (LCC) as the local education authority, and the West Leicestershire Clinical Commissioning Group (CCG) as the local healthcare commissioner.

46. The S106 allows me to discount any obligation that does not meet the three statutory tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). Obligations must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests are repeated in NPPF paragraph 57.

47. There are a number of education contributions in the S106 relating to primary education and transport, secondary education, special educational needs (SEN), and early years. Starting with primary education, the appellants and LCC concur that a development of 170 dwellings would generate 51 pupils of primary school age. There are two primary schools in Sileby (Highgate and Sileby Redlands) and one in Cossington. The site falls within the catchment of Sileby Redlands although the school in Cossington is nearer.

48. LCC has confirmed that Sileby Redlands has a net capacity of 420 and forecasts that 392 pupils would be on the roll should this development proceed, a surplus of 28 places. However, recognising that children do not always attend their catchment school, LCC has assessed all primary schools within a 2-mile radius of the site. LCC expressed concerns before the Inquiry opened that factoring in forecasts for Highgate and Cossington primary schools would result in an overall deficit of 94 school places in the 2-mile radius should this development proceed.

49. Following discussion at the Inquiry, LCC clarified that Highgate would have a lower deficit of 30 places by removing one development that has not yet secured planning permission and another that would be expected to fund expansion at Cossington. This is based on a net capacity of 285 places at Highgate, but LCC's latest (March 2022) school capacity data returns to the Department for Education shows a net capacity of 315 places. Therefore, no deficit would exist at Highgate should this development proceed. The deficit forecast at Cossington is expected to be addressed by the aforementioned expansion.

50. From the evidence before me, it has not been demonstrated that the development would result in a deficit of primary school places at either the catchment school or the two other nearby schools. Therefore, the Primary Education Contribution is not necessary. Without a deficit, there is no requirement to provide transport to primary schools outside of the 2-mile radius of the site. Therefore, the Primary Transport Contribution is not necessary either.

51. Turning to secondary education, 170 dwellings would generate 29 pupils aged 11-16. The catchment school is Humphrey Perkins School in Barrow upon Soar although the nearest school is Wreake Valley Academy in Syston. LCC has forecast that Humphrey Perkins School would have an overall deficit of 77 places if this development proceeds. It is evident that the school's net capacity has reduced from over 1,000 pupils to 900 in the latest March 2022 data returns. While the reasons for this are not entirely clear, the data has been validated and is intended to be a true reflection of current capacity. In the same way as the data return for Highgate, I have little reason to doubt the validity of the March 2022 figures.

52. Wreake Valley is projected to have ample spare capacity in future years, but the academy is in a separate education planning area and none of the above

primary schools feed into it. School census data indicates that only a small percentage of 11-16 year olds from Sileby attend the academy. While it is nearer, the route involves crossing major roads. The academy is the nearest post-16 education provider and has ample capacity for such pupils, but this is separate from 11-16 secondary education. It is likely that most pupils from the development would look to attend Humphrey Perkins. Given the projected deficit, I therefore consider that the Secondary Education Contribution is necessary.

53. With regard to SEN, there is no disagreement that the nearest special school (Ashmount School in Loughborough) is projected to have a deficit of 20 places if this development proceeds. It is possible that any child with SEN could be accommodated in mainstream schools, but also possible that they may require specialist facilities. The development of 170 dwellings would generate less than one pupil with SEN at both primary and secondary levels and may not generate anyone with SEN. However, the same argument could be applied to housing developments of similar sizes when cumulatively there could be an impact on SEN provision. Therefore, I consider the SEN Contribution is necessary.

54. LCC has confirmed that it would require funding for 10 early years places as a result of the development of 170 dwellings. It would appear that another undetermined development (175 dwellings at Peashill Farm, Sileby) has been assumed to take up existing surplus capacity in early years places, leaving this development to fund the shortfall. However, the Peashill Farm proposal has also been asked to provide a financial contribution for early years places, which presents the risk of double funding of places. Moreover, the Peashill Farm proposal is undetermined and so may not take up the spare capacity in any event. Therefore, the Early Years Contribution would be unreasonable.

55. Regarding healthcare matters, there are two general practices in Sileby at Highgate Medical Centre and The Banks Surgery. The CCG has highlighted capacity issues for both practices and has sought funding towards reconfiguration and refurbishment and/or extension of the two premises. Interested parties have highlighted the length of time it can take to get an appointment. It is evident that both practices are still accepting new patients, but practice lists are only closed in extreme circumstances. While the practices are not physically open for the full NHS contractual core hours (8am to 6:30pm), I have little reason to doubt that the practices will be operational within these core hours and that staff will be undertaking other essential work outside of public opening times.

56. The NHS Constitution seeks to provide a comprehensive service to all, but this does not automatically mean that only the NHS should fund all increases in capacity. There is a similar requirement in terms of education that the state must provide sufficient spaces for all pupils in any local area, but it is widely accepted that new development can fund increases in school capacity where necessary. Therefore, while S106 monies should not be used to fund additional healthcare staff, it can be used for physical capacity works to make new development acceptable in planning terms.

57. The practices could seek reimbursement from the NHS of any costs expended on improving or expanding their premises, including those funded by the S106. This would lead to the risk of double funding, with the S106 unable to clawback any money spent in such circumstances. Nevertheless, the CCG at the Inquiry

gave assurances that the practices would not be able to claim the S106 money back as the CCG would manage the business case for any works to the premises. While the CCG is not a signatory to the S106, it is a public body acting in the public interest. Therefore, I am satisfied that any reimbursement of S106 money would not occur.

58. However, I have limited information to demonstrate how the number of additional patients generated by this development would impact significantly on the provision of healthcare services locally, or that other options to improve capacity such as longer opening hours have been explored and ruled out. The financial request from the CCG is based on a standard formula and it is not clear how capacity would be increased. Therefore, it is not possible to say that the Healthcare Contribution is necessary to make the development acceptable in planning terms.

59. The Affordable Housing obligation would ensure that 30% of the total dwellings are affordable and of an appropriate type, size and tenure, in line with CCS Policy CS3 and SNP Policy H4 that deal with affordable housing. The On Site Public Open Space obligation would secure a mixture of parkland, natural and semi-natural open space, amenity green space, play area and a young persons' facility within the site, in accordance with CCS Policy CS15 that deals with open spaces, sports and recreation. The Outdoor Sports Facilities Contribution would go towards improvements to football, cricket and/or bowls facilities within Sileby, while the Allotments Contribution would be used to provide community growing space or additional allotment plots in Sileby. Both would address shortfalls in existing provision as required by CCS Policy CS15.

60. The Bus Display, Bus Flag, Bus Shelter and Bus Stop Improvements Contributions are all intended to improve the existing nearby bus stop on Cossington Road and, in conjunction with the Bus Passes Contribution, would encourage public transport use by new residents. The Travel Pack Contribution would inform residents of sustainable travel choices, while the STARS Contribution would support the monitoring of the Travel Plan that would be secured by condition. All of these contributions would be in accordance with CCS Policy CS17 which promotes sustainable travel.

61. The Library Facilities Contribution and the Civic Amenities Contribution would allow for the provision of facilities at Sileby Library and Mountsorrel Household Waste Recycling Centre respectively to accommodate demand from the development. This would be in accordance with CCS Policy CS24. The County Council Monitoring Costs Contribution is necessary to ensure that LCC can monitor compliance with relevant obligations.

62. With the exception of the Primary School Contribution, the Primary Transport Contribution, the Early Years Contribution, and the Healthcare Contribution, I am satisfied that all of the above planning obligations accord with the three tests in Regulation 122 of the CIL Regulations 2010. Therefore, I can take all of the obligations into account as part of my decision apart from the Primary School Contribution, the Primary Transport Contribution, the Early Years Contribution, and the Healthcare Contribution. In conclusion, the development would make adequate provision for affordable housing and other infrastructure requirements. Therefore, it would accord with CCS Policies CS3, CS15, CS17 and CS24 and SNP Policy H4.

Other Matters

63. With the exception of the access point, all other elements shown on the masterplans are indicative. Moreover, the development is for up to 170 dwellings. Therefore, at the reserved matters stage it should be possible to achieve a layout, scale and quantum of development that avoids unacceptable effects to the living conditions of residents of existing properties with regard to matters such as outlook, privacy, light and noise. This should also avoid any unjustified interference with an individual's right to enjoy their property. Similarly, it should be possible to achieve satisfactory design, landscaping, and sustainable construction at the reserved matters stage. There is little evidence that the development would result in an increase in crime or anti-social behaviour. The effects of the construction process can be controlled and mitigated via a management plan secured by condition.

64. In terms of agricultural land quality, the majority of the site comprises Grade 2 and Grade 3a (the best and most versatile land as defined by the NPPF) along with a small area of Grade 3b near the brook. While the agricultural land would be lost, the appellants' agricultural quality survey indicates that the soil quality is affected by issues with drought as well as wetness. In combination with the relatively limited area of land involved, in comparison to the wider farmed countryside, I therefore consider the loss of land carries no more than moderate weight.

65. Adequate parking provision within the development site can be secured at the reserved matters stage to avoid increasing any on-street parking along Cossington Road. The distance from the site to the centre of Sileby is not beyond an unreasonable distance for walking even if cycling is less attractive due to the busy nature of the road. There is also a regular bus service. Therefore, future occupants would not be overly reliant on the private car to access services and facilities, which in turn should avoid an unacceptable effect on parking within the centre of Sileby. Vehicle speeds past the site can be addressed via traffic calming measures while the existing footway can be widened. Both elements can be secured by condition.

66. The appellants' traffic assessment (TA) was carried out during a period of Covid lockdown in early 2021 and so had to utilise older traffic count data from 2016 for the Brook Street junction to forecast effects on this junction. The findings that the junction would operate within capacity in 2026 with or without the proposed development were supplemented with traffic count data of the junction in November 2021. While traffic levels have increased since 2016, the 2021 results indicate that the effect on the junction would not be severe. No capacity assessment has taken place of the Mountsorrel Lane / Barrow Road / King Street junction, but this junction is further away from the site than the Brook Street junction and was outside the TA study area agreed between the appellants and the local highway authority.

67. While traffic noise and vibration can have negative effects on nearby listed buildings, the development is unlikely to generate significant numbers of larger vehicles that have the greatest impact. It is evident that the local area suffers from flooding particularly in relation to the River Soar and its tributaries. This can close minor roads between Sileby and other settlements and result in more traffic using Cossington Road. While this is clearly disruptive, such events remain relatively infrequent and so it would not be necessary for the TA to

have assessed their impact from a highway perspective. The main north-south road through Sileby and Cossington is undoubtedly busy during rush hour periods and around the start and end of the school day in Cossington. However, the evidence before me does not indicate that the development would have an unacceptable effect on highway safety.

68. The majority of the site area proposed for built development lies outside of modelled flood zones, while levels can be raised within the limited area at greater risk of flooding to provide sufficient access and protection. The drainage strategy for the development has been designed to lower existing run-off rates and reduce the likelihood of flooding elsewhere. The implementation and management of surface and foul water drainage can be secured via condition. There is little evidence to demonstrate that the existing sewer network is at capacity.

69. The site has limited ecological value due to its use for arable farming. While the site has been used by wintering wildfowl, the main focus for such birds is Cossington Meadows Nature Reserve. Existing hedgerows can be reinforced to improve biodiversity, while the proposed public open space would provide an increased range of habitats for a variety of species including mammals and birds of prey. The protection of existing hedges and trees and the provision of roosting boxes would benefit bats and birds. The enhancements and overall biodiversity net gain can be secured by condition.

70. There is little evidence that the operation of Derry's nursery would be put at risk by the development. Whilst previously developed land should be prioritised wherever possible, this does not mean that suitable greenfield windfall sites should be ignored. Finally, concerns relating to restrictive covenants and effects on property prices are not planning matters.

Main issue (d): The planning balance

71. The parties accept that the Council cannot demonstrate a 5 year supply of deliverable housing sites. The supply as of 31 March 2021 stood at 3.34 years and has dropped slightly to 3.23 years as of 31 March 2022. As a consequence, NPPF paragraph 11(d) is applicable. This states that where there are no relevant policies, or the policies which are most important for determining the application are out of date (including where a 5 year housing land supply cannot be demonstrated), planning permission should be granted unless one of two exceptions apply. The first exception is not applicable as there are no areas or assets of particular importance affected. The second exception states that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

72. The parties agree that CCS Policies CS1 and CS11, CLP Policies ST/2, CT/1 and CT/4, and SNP Policies G1 and G2 are the most important policies for this appeal[4]. The lack of a 5 year housing land supply renders all of these policies out of date. Additionally, the three CLP policies can also be regarded as out of date due to fact that the Limits to Development and ALS boundaries that they define are based on superseded development needs and have in any case been

[4] The Statement of Common Ground also refers to CLP Policy CT/2 as a most important policy. However, the CLP Proposals Map clarifies that the countryside designation applies to all land outside the Limits to Development which is not designated as Green Wedge or ALS. Therefore, Policy CT/2 is not applicable.

breached on multiple occasions by various permissions. SNP Policy G1 is broadly just an update of the CLP Limits to Development to reflect sites with allocations or planning permission, but it is clear from the methodology that a more nuanced approach has been taken. Therefore, the policy is not out of date for the same additional reason as the three CLP policies.

73. Being out of date does not mean that little or no weight should be given to the above policies. SNP Policy G2 for example is consistent with the NPPF's design principles and so can be afforded full weight. In contrast, CLP Policies ST/2, CT/1 and CT/4 and SNP Policy G1 are not consistent with NPPF paragraph 174 or with CCS Policy CS11 in terms of their more restrictive approach to development in the countryside as discussed above. Therefore, the weight to be given to these four policies is limited in that respect.

74. CCS Policy CS11 is less restrictive and broadly consistent with the NPPF in terms of its approach to development in the countryside. There is disagreement between the parties as to whether this is a policy for the supply of housing. While the supporting text in CCS paragraph 7.15 acknowledges the need to balance the retention of ALS with the need for new housing, the policy does not prohibit housing in the countryside or ALS. Therefore, the policy can be afforded significant weight. CCS Policy CS1 is broadly consistent with the NPPF insofar as it sets out a settlement hierarchy and seeks to direct the majority of development to the most sustainable locations. Thus, the policy can also be afforded significant weight.

75. Turning to consider the benefits of the development, the parties agree that the provision of up to 170 dwellings is beneficial due to the lack of a 5 year housing land supply. In attributing weight to this provision, it is important to have regard to how long the shortfall is likely to persist and the steps being taken to address it. The preparation of the ELP is intended to provide a 5 year supply upon adoption. The examination is underway but hearing sessions have yet to be held. I have not been made aware of the full extent of objections to the ELP, but the parties did not give the impression that they are uncontroversial. For example, the issue of meeting Leicester's unmet housing needs is an unresolved matter. Assuming hearing sessions are completed over summer 2022, there would still be the need for main modifications consultation and potentially further hearings before the Inspectors produce their report.

76. The Council estimates that the adoption of the ELP in 12-18 months is reasonable. The appellants accepted that was achievable but not probable given the above uncertainties. It is impossible to be confident on this matter, but even on the Council's estimate the ELP offers no imminent resolution to the shortfall. It is possible that the ELP might be adopted before completions are achieved on this site, notwithstanding the truncated reserved matters process, but also possible that it may not.

77. The Council has been granting or resolving to grant planning permission on windfall sites and draft ELP allocations such as the Humble Lane scheme in order to boost housing supply. However, the strategic urban extensions in the CCS are only just starting to deliver units in 2022 when the CCS expected delivery from 2016/17 onwards. I have little evidence that the shortfall will be eliminated before the ELP is adopted. Therefore, I consider that significant weight can be afforded to the provision of up to 170 dwellings on this site. Significant weight can also be attributed to the provision of up to 51 affordable

units within that overall dwelling number, given the extent of affordable housing shortfall within the borough as acknowledged by both parties.

78. Economic benefits in terms of jobs and investment at the construction and occupation stages can be afforded moderate weight. The housing would be within walking and cycling distance of a range of services and facilities, including primary schools, which would represent an environmental and social benefit of some significance.

79. There would be a biodiversity net gain of around 39% for habitats and 74% for hedgerows, both clearly above the government's target of 10% and so can be afforded reasonable weight. The amount of proposed open space provided goes beyond the required amount for the size of development and would be accessible to the public. At the same time, it is intended to mitigate the effect of the development in terms of the ALS and landscape character. S106 contributions towards local open space improvements and allotment provision are primarily intended to address the impact of an increased population. Additional native tree planting and the potential for a more sensitively designed settlement edge than existing are largely to mitigate the effect of the development on character and appearance. Therefore, the open space and landscaping benefits carry no more than moderate weight.

80. Turning to the adverse impacts, the development would have a negative effect on the character and appearance of the area in relation to landscape and the ALS. The level of harm would be no greater than moderate, while I give limited weight to the conflict with CLP Policies ST/2, CT/1 and CT/4 and SNP Policy G1 for the reasons set out above.

81. There would be conflict with CCS Policy CS11 in terms of the effect on landscape character but not in terms of maintaining the separate identities of towns and villages and clearly maintaining the separation between the built-up areas of settlements. Therefore, I give moderate weight to the conflict with this policy. There would be conflict with CCS Policy CS1 insofar as the development would not fully accord with policies elsewhere in the strategy (CS11), but the development would be located in accordance with the settlement hierarchy and would meet development needs. Therefore, I only give moderate weight to the conflict with this policy. As noted above, I attribute moderate weight to the loss of best and most versatile agricultural land.

82. The adverse impacts of the development carry no more than moderate weight and so would not significantly and demonstrably outweigh the benefits which include those of significant weight. As such, the presumption in favour of sustainable development would apply in line with NPPF paragraph 11(d).

83. In conclusion, the negative effects of the proposed development in terms of character and appearance and the conflict with the development plan are outweighed by other considerations. The development would make adequate provision for affordable housing and other infrastructure requirements and would be in a suitable location having regard to the development plan taken as a whole along with national policies. Therefore, despite the conflicts with CCS Policies CS1 and CS11, CLP Policies ST/2, CT/1 and CT/4, and SNP Policy G1, there are sufficient material considerations to indicate that planning permission should be granted in this instance.

Conditions

84. Conditions 1 and 2 are necessary to clarify the reserved matters still to be approved as well as to set out the timeframe for applications to be submitted and the development implemented. The timeframes are shorter than the standard amount to encourage the earlier delivery of housing. Condition 3 is necessary to ensure that details of internal access and circulation routes are provided, as the approved plans only relate to the access point onto Cossington Road and the masterplans are only illustrative. Conditions 2 and 3 are pre-commencement as these matters needs to be fixed before works begin on site.

85. Condition 4 is necessary to ensure that the construction phase has an acceptable effect including on the operation of the adjacent railway line. Conditions 5, 6 and 7 are necessary to ensure appropriate drainage and flood mitigation measures are in place. Condition 8 is necessary in the interests of protecting existing trees and hedges, while Condition 9 is necessary to address the potential archaeological interest of the site. Condition 10 is necessary to ensure adequate noise mitigation measures to address both the road and railway line. Conditions 4 to 10 are pre-commencement conditions as they concern matters that need to be agreed and/or provided before works begin.

86. Condition 11 is necessary to control lighting levels for the benefit of both residents and wildlife. Condition 12 is necessary for rail safety. Conditions 13, 14 and 16 are necessary in the interests of highway safety to secure adequate access and visibility splays, improve the existing footway, and provide traffic calming measures. Condition 15 is necessary to promote sustainable modes of transport.

87. Condition 17 is necessary to ensure that the open space is properly managed in terms of landscaping and biodiversity. Condition 18 is necessary to specify general accordance with relevant plans including the parameters plan. Condition 19 is necessary to ensure that any land contamination matters are addressed appropriately.

Conclusion

88. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul G Tucker QC and Constanze Bell of Counsel, instructed by Harry White AssocRTPI, Senior Planner at David Wilson Homes East Midlands.

They called:

Angela Smedley BA (Hons) DipTP MRTPI
Associate Director, Fisher German

Andrew Cook BA (Hons) MLD CMLI MIEMA CENV
Executive Director, Pegasus Group

Richard Holden B.Eng (Hons) MCIHT IMAPS
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Robert Holland BA (Hons) MCIHT
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Oliver Ramm BSc (Hons) MCIEEM
Director, Ramm Sanderson Ecology Ltd

Ben Hunter BA DipMS
Education and Social Infrastructure Consultant, Educational Facilities Management Ltd

Paul Wakefield
Partner, Shakespeare Martineau

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards of Counsel, instructed by the Head of Legal Services at Charnwood Borough Council.

He called:

Simon Higson
Director of Landscape and Ecology, Heaton Planning Limited

Nigel Gould BSc DipURP MRTPI
Director of Planning, Heaton Planning Limited

Helen Knott MRPTI
Group Leader – Development Management, Charnwood Borough Council

INTERESTED PARTIES:

Councillor Elizabeth Jones	Sileby Parish Council
Councillor Elizabeth Astill	Sileby Parish Council
Councillor Penny Weston-Webb	Cossington Parish Council
Councillor Paul Murphy	Charnwood Borough Council
Vannessa Williams	Local resident
Nic Thomas	Leicestershire County Council
Sharon Townsend	Leicestershire County Council
David Atterbury	Leicestershire County Council

Sarah Shuttlewood	Leicestershire Clinical Commissioning Groups

DOCUMENTS SUBMITTED AT OR AFTER INQUIRY

ID1: Appellants' appearances list

ID2: Appellants' opening statement

ID3: Council's opening statement

ID4: Map of development sites around Sileby and Cossington

ID5: Updated draft Section 106 agreement dated 22 March 2022

ID6: *R. (on the application of HFAG Ltd) v Buckinghamshire Council* [2022] EWHC 523 (Admin)

ID7: Updated verified views (document ref. V3D 211102 dated March 2022)

ID8: Updated list of conditions dated 24 March 2022

ID9: Parameters Plan ref GL1400 18

ID10: Local Setting Plan ref CBC-LSP-Rev A

ID11: Measured Distances Plan ref CBC-MDP-Rev A

ID12: Leicestershire County Council letter dated 1 April 2022 including ID12A (school capacity survey 2021 form)

ID13: Appellants' rebuttal to ID12 / ID12A

ID14: Extract from the Leicestershire Round guidebook

ID15: Update list of conditions dated 14 April 2022

ID16: Leicestershire Clinical Commissioning Group's letter dated 14 April 2022

ID17: Appellants' response to ID16

ID18: Final version Section 106 agreement (unsigned and undated)

ID19: Charnwood Open Spaces Strategy 2013-2036

ID20: Statement on Housing Land Supply Monitoring dated 27 April 2022

ID21: Leicestershire Clinical Commissioning Group's letter dated 27 April 2022

ID22: Appellants' response to ID21

ID23: Appeal decision APP/X2410/W/19/3220699 Land off Barnards Drive, Sileby

ID24: Independent Examiner's Report into Sileby Neighbourhood Plan

ID25: Council's Closing Submissions

ID26: Appellants' Closing Submissions

ID27: Completed and executed Section 106 agreement dated 10 May 2022

SCHEDULE OF CONDITIONS (19)

1) Details of the appearance, landscaping, layout, and scale (hereafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before any development takes place 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 18 months from the date of this permission. The development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters to be approved.

3) No development shall commence until plans and particulars of the accessibility within the site, including circulation routes and how these fit into the surrounding access network, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

4) No development shall commence until a construction management plan, including details of the routing of construction traffic, wheel cleansing facilities, vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the local planning authority. The construction of the development shall thereafter be carried out in accordance with the approved details and timetable.

   The construction management plan should also include:

   - A construction methodology demonstrating consultation with the Asset Protection Manager at Network Rail;
   - Confirmation that demolition or construction works shall not take place outside 0700 hours to 1800 hours Monday to Friday and 0700 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays; and
   - Details of any lighting to be used during the construction phase.

5) No development shall commence until:

   - A surface water drainage scheme based on the principles contained within the approved Flood Risk Assessment reference RACE/DWH/CRS/FRA 3 has been submitted to and approved in writing by the local planning authority;
   - Details relating to the management of surface water during construction has been submitted to and approved in writing by the local planning authority; and
   - Details in relation to the long-term maintenance of the surface water drainage system within the development have been submitted to and approved in writing by the local planning authority.

   The scheme shall be implemented in accordance with the approved details before development in any given phase is brought into use.

6) No development shall commence until flood mitigation measures have been submitted to and approved in writing by the local planning authority. The flood mitigation measures shall include:

- Ensuring finished floor levels are set at least 600mm above the 1 in 100 year plus 50% climate change level;
- The implementation of flood resilient design and construction methods to dwellings within Flood Zone 2; and
- No raising of ground levels within Flood Zones 2 or 3 without the provision of floodplain compensation.

The mitigation measures shall be implemented in accordance with the approved details before development in any given phase is brought into use.

7) No development shall commence until drainage plans for the disposal of foul sewage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

8) No development shall commence until an Arboricultural Method Statement, prepared in accordance with BS 5837:2012 Trees in Relation to Design, Demolition and Construction, has been submitted to and approved in writing by the local planning authority. Works shall thereafter be carried out only in accordance with the approved details. The Arboricultural Method Statement shall include the specification, location and phasing for the installation of tree and hedge protection measures and a schedule of all proposed tree and hedge works including the reason for such works. No trees or hedges on the site shall be wilfully damaged, cut down, uprooted, pruned, felled or destroyed except for the trees and hedges to be removed to facilitate the development.

9) No development shall take place or commence until a programme of archaeological work including a Written Scheme of Investigation (WSI) for the relevant phase, sub-phase or development parcel has been submitted to and approved in writing by the local planning authority. The WSI shall include an assessment of the significance and research questions and:

(i) the programme and methodology of site investigation and record;

(ii) the programme for post investigation assessment;

(iii) provision to be made for analysis of the site investigation and recording;

(iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;

(v) provision to be made for archive deposition of the analysis and records of the site investigation;

(vi) nomination of a competent person or persons/organisation to undertake the works set out within the WSI; and

(vii) no demolition/development shall take place other than in accordance with the WSI.

The programme of archaeological work shall be carried out in accordance with the approved WSI.

10) No development shall commence until details of the noise attenuation measures required to achieve levels in accordance with BS8233:2014 as

outlined in the Noise and Vibration Assessment produced by MEC (reference 26128-04-NVA-01 REV B and dated February 2021) have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the noise mitigation measures have been provided in accordance with the approved details and shall thereafter be retained in perpetuity.

11) No part of the development shall be occupied until details of any external lighting have been submitted to and approved in writing by the local planning authority. The scheme should be implemented in accordance with the agreed details.

12) No part of the development shall be occupied until details of a suitable trespass proof fence adjacent to Network Rail's boundary (approx. 1.8 metres high) have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and thereafter retained in perpetuity. Network Rail's existing fencing/wall must not be removed or damaged.

13) No part of the development shall be occupied until the access arrangements shown on drawing B024412-35-18-003 Rev A have been implemented in full. Visibility splays for vehicles and pedestrians (2 metres by 2 metres) once provided shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

14) No part of the development shall be occupied until the offsite works shown on drawing number B024412-35-18-003 Rev A have been implemented in full.

15) No part of the development shall be occupied until an amended framework/full Travel Plan which sets out actions and measures with quantifiable outputs and outcome targets has been submitted to and agreed in writing by the local planning authority. Thereafter the agreed Travel Plan shall be implemented in accordance with the approved details.

16) The development shall not be occupied until scheme of speed reduction measures in respect of Cossington Road has been submitted to and agreed in writing by the local planning authority and completed under a Traffic Regulation Order.

17) The development shall not be occupied until a Landscape and Biodiversity Management Strategy has been submitted in accordance with the agreed reserved landscape matters and agreed in writing by the local planning authority. Thereafter, works will be carried out in full and in accordance with the agreed timescales within the Landscape and Biodiversity Management Strategy.

18) The development hereby approved shall be carried out in general accordance with the following plans and documents:

- SIL/LOC/01 - Location Plan
- B024412-35-18-003 Rev A - Proposed Site Access Junction
- GL1400-18 - Parameters Plan

19) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.