

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

Land at Barkby Road, Queniborough

Against the refusal of outline planning permission by Charnwood Borough
Council for application P/20/2380/2

*“Outline application for up to 150 dwellings, together with new open space,
landscaping and drainage infrastructure, with all matters reserved accept for access
(as amended to include proposed junction improvement works at Barkby Road cross
roads).”*

Statement of Case

February 2023

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Appendix 1: Justification for a Public Inquiry

1. Introduction

- 1.1 This Statement of Case is submitted by David Wilson Homes East Midlands ('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/20/2380/2) for the residential development of Land off Barkby Road, Queniborough, Leicestershire ("the appeal site").
- 1.2 The outline planning application ("the application") was submitted in December 2020 and sought the development of:
- "Outline application for up to 150 dwellings, together with new open space, landscaping and drainage infrastructure, with all matters reserved except for access (as amended to include proposed junction improvement works at Barkby Road cross roads."*
- 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 an accompanied site visit should take place at an early point in the inquiry process. It is considered that this will better enable the Inspector to examine the key issues relating to the appeal and will thereby save Inquiry time.
- 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 to Committee, 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, and will assist in establishing a suitable website to enable all parties to readily access those documents.
- 1.6 The Appellant has also prepared a draft Statement of Common Ground (SoCG) on general Planning Matters and is submitted with this Statement of Case. A separate draft Landscape Statement of Common Ground is also in preparation.
- 1.7 The Appellant also intends to prepare and submit a legal agreement and/or unilateral undertaking covering planning obligations under section 106 of the Town and Country Planning Act 1990. The

Appellant intends to continue its dialogue with the Council and other relevant stakeholders in the run up to the inquiry about the contents of the draft section 106.

Appeal Site and Surroundings

- 1.8 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 (CD1.05) and the Planning Statement (CD1.04).

Relevant Planning History

- 1.9 The application, which is the subject of this appeal, represents a resubmission of an outline application submitted in 2018, for 150 dwellings, all matters reserved except for access (P/18/0309/2). This earlier application was submitted in February 2018 and refused in June 2018 following Committee decision (CD6.05).

The Appeal Scheme

- 1.10 The application, which is the subject of this appeal, was made in December 2020 and validated in January 2021. The application was supported by a comprehensive suite of technical reports (CD1.01-CD1.17). These were supplemented by various documents (CD2.01-CD2.14) provided at the post submission stage in response to matters raised by either statutory consultees or Officers. At the time of the determination there was no outstanding request for additional information.
- 1.11 The application was presented before the Council's Plans committee on the 24th November 2022, with an Officer recommendation to grant outline planning permission. The Officer's Report ("the OR") is provided at CD4.02.
- 1.12 The Plans Committee resolved to refuse the application, contrary to the Planning Officers' recommendation. The Decision Notice was issued on the 9th December 2022 (CD4.01) and sets out the following reasons for refusal:

- The proposed development, in itself and cumulatively with other development, would result in a harmful impact upon on the character of the countryside in this location and the Area of Local Separation within which it is located. This would have an impact on the individual*

identity of Queniborough and Syston and result in coalescence between the settlements and the proposals would not protect and maintain the separate identities of the town and village. The development would therefore be contrary Policies CS2 and CS11 of the Charnwood Local Plan Core Strategy 2015, saved Policies EV/1, CT/1, CT/2 and CT/4 of the Adopted Borough of Charnwood Local Plan 1991-2006 and Policy Q6 of the Queniborough Neighbourhood Plan 2021. The Council consider that such harm arising from the proposals would significantly and demonstrably outweigh the planning benefits of the scheme.

2. *In the absence of a signed Planning Obligation, although a Draft Heads of Terms is noted, the proposal fails to deliver an appropriate level of affordable housing and contributions towards sustainable travel, ecology, education, libraries, civic amenity, community facilities and open space and play provision that are necessary to make the development acceptable in planning terms. The proposals would be contrary to Policies CS3, CS13, CS17 and CS24 of the Charnwood Local Plan 2011-2028, Core Strategy (2015) and adopted Housing Supplementary Planning Document (2017) and Community Infrastructure Levy Regulations..*

1.13 Reason for Refusal 2 arises because of the absence of a completed legal agreement. The Council has always acknowledged that it is capable of being overcome by the submission of such an obligation. The application was however submitted with draft Heads of Terms (contained within the Planning Statement **Chapter 7 – CD1.04**). Comments upon those Heads of Terms are awaited. 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:

“The application is therefore recommended to be supported subject to appropriate planning conditions being attached and contributions being secured to support local infrastructure as part of a S106 Legal Agreement”

1.14 A list of contributions and obligations are set out in the OR at page 29-31 (**CD4.02**). As such it is not anticipated that RfR2 will be a main issue for the appeal.

1.15 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) (CD5.01)
 - Charnwood Local Plan 2011 to 2028 Core Strategy (CCS) (Adopted November 2015) (CD5.02)
 - Queniborough Neighbourhood Plan (SNP) (Made June 2021) (CD5.11)
- 2.3 It is agreed, as evidenced through the Officer's Report (CD4.02) 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. The Neighbourhood Plan reflects this housing requirement and is 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:
- Saved Local Plan Policy ST/2 (Limits to Development)
 - Saved Local Plan Policy EV/1 (Design)
 - Saved Local Plan Policy CT/1 (General Principles for Areas of Countryside, Green Wedge and Local Separation)
 - Saved Local Plan Policy CT/2 (Developments in the Countryside)
 - Saved Local Plan Policy CT/4 (Development in Areas of Local Separation)
 - Core Strategy Policy CS1 (Development Strategy)
 - Core Strategy Policy CS2 (High Quality Design)
 - Core Strategy Policy CS11 (Landscape and Countryside)
 - Queniborough Neighbourhood Plan Policy Q6 (Countryside and Landscape)

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 2022, the Council claimed a 3.04 year supply (**CD6.11**) based on a local housing need, calculated using the Standard Method (currently 1,160dpa; excluding any unmet need from Leicester City). This position has been confirmed through recent appeal decisions in Charnwood Borough, with a recent appeal (APP/X2410/W/21/3289048 – **CD6.09**) confirming that the true position was likely to be below this, being somewhere between 2.43 to 3.04 years.
- 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 scheme benefits from the presumption in favour of sustainable development under Paragraph 11d of the Framework (the 'tilted balance'). Furthermore it is important to note that the requirement to demonstrate a five year housing land supply is a minimum requirement of policy. 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 (**CD5.03**) and has reached examination stage.
- 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 **(CD5.05)** and Addendum May 2019 **(CD5.06)**)
- The Charnwood Landscape Capacity and Sensitivity Assessment Addendum, LUV, (February 2021) **(CD5.08)**
- The Charnwood Landscape Sensitivity Assessment, Charnwood Borough Council Officers, (July 2021) **(CD5.07)**
- Leicestershire County Council Local Transport Plan (LTP)
- Leicestershire Housing and Economic Development Needs Assessment (HEDNA) – 2017
- Leicester & Leicestershire Housing & Economic Needs Assessment Housing Distribution Paper (June 2022)
- Leicester & Leicestershire Authorities - Statement of Common Ground relating to Housing and Employment Land Needs (June 2022)
- Housing Supplementary Planning Document (adopted May 2017 – updated December 2017) **(CD5.12)**
- Design Supplementary Planning Document (January 2020)
- The Community Infrastructure Levy Regulations 2010 (CIL) (as amended)
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

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 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 in itself, and cumulatively with other development, result in a harmful impact upon the character of the countryside in this location and the Area of Local Separation, impacting on the individual identity of Queniborough and Syston resulting in coalescence between the settlements, not protecting and maintaining the separate identities of the town and village. RfR1 considers such harm would significantly and demonstrably outweigh the benefits of the development.
- 4.5 In assessing the application the Appellant will demonstrate that 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 Policies CS2 and CS11, Saved Local Plan Policies EV/1, CT/1, CT/2 and CT/4 and Neighbourhood Plan Policy Q6. This will also consider the emerging evidence base referred to above.

- 4.6 It will be demonstrated that the appeal proposal will not bring Queniborough and Syston any closer than they currently exist and thus will patently not result in the coalescence of the settlements which will remain separated a significant width of by open land. The separate character and identities of the settlements will be maintained through the delivery of extensive open space, together with appropriate landscaping which will strengthen the character edge of Queniborough and securing a clear sense of travelling between the settlements, thereby actively reinforcing the gap and safeguarding their separate character and identities.
- 4.7 It will also be demonstrated that the appeal proposal creates the opportunity to enhance the edge of Queniborough with the appeal proposals designed to properly address the wider countryside to the south, creating a positive landscaped edge, and attractive gateway to the settlement along Barkby Road.
- 4.8 The Appellant will also consider the role of Queniborough within the identified settlement hierarchy, demonstrating that it is an accessible and sustainable location for additional new housing. Evidence will also consider housing need in Charnwood in general and Queniborough in particular, historic delivery to meet 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 Queniborough – including the immediately adjacent Davidson Homes development.
- 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. It will furthermore be demonstrated that 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 significant 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.

4.12 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 anywhere close to the minimum five year housing land supply required by national policy;
- 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;
- A mix (size, type and tenure) of housing in a sustainable location, which will help to create a mixed and balanced community as well as integrating with the existing community
- The provision of new publicly accessible green infrastructure for existing and future residents to extensive open space;
- Highly sustainable and accessible location, retention of Public Right of Way, and provision of travel packs and bus passes;
- The delivery of a new, high quality, sensitively designed edge and attractive gateway to Queniborough, helping to better define existing communities; and
- 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.

4.13 On this basis, the Appellant will respectively request that the appeal is allowed.

Reason for Refusal 2

4.14 RfR2 pertains to the absence of a completed legal agreement, citing Policies CS3, CS13, CS17 and CS24 of the Core Strategy, along with the adopted Housing Supplementary Planning Document (2017) and Community Infrastructure Levy Regulations. The application was submitted with draft Heads of Terms (contained within the Planning Statement **Chapter 7 – CD1.04**). 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

- 4.15 It is considered that in the light of the Inspectorate's Appeal Procedural Guidance, annex K that an inquiry is self evidently warranted:
- (i) there is a clearly explained need for the evidence to be tested through formal questioning by an advocate;
 - the issue of impact upon the character and appearance is not simply one of judgment on site, but requires careful consideration of how the two communities are presently identified. This is a question of morphology, landscape, history and community cohesion which requires careful examination in evidence.
 - The Council's assertion that there will be an undermining of that separation, despite the fact that the communities will remain physically separated is one that requires to be tested across a range of areas.
 - Similarly the Appellant's position that structural landscaping, together with a range of other measures will accentuate the existing separation is one that is understood to be highly contentious and will itself require careful analysis.
 - Furthermore the issue of the extent of the deficit against the policy minimum of a 5 year housing land requirement is an issue which will required considerable debate and analysis and is likely to require detailed cross examination.
 - Finally, the Council fail to distinguish between the functional planning designation of the Area of Local Separation and Landscape Visual Impact matters and in so doing refer to evidence which has not been tested or examined.
 - Case law in relation to the interpretation of policies means detailed legal submissions will be necessary
 - and a clear need for evidence to be tested through formal questioning.
 - (ii) the issues are complex (for example, where large amounts of highly technical data are likely to be provided in evidence);
 - The above matters are plainly not straightforward and will require an array of highly technical evidence.
 - In addition the status of the emerging local plan (which is presently at examination) and in particular its approach to the issue of future housing need is one of considerable complexity; not least given that there is a need to accommodate a significant element of overspill housing from Leicester.
 - (iii) the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing;

- The proposals have generated considerable local controversy with over 150 letters of objection. It is anticipated that the inquiry will be attended by a large number of third parties and that local representative groups are likely to want to seek rule 6 status.
- Similar appeals within Leicester involving similar issues to this appeal have been dealt with by inquiry and it is considered that to seek to conduct the event as a hearing would be unmanageable.

4.16 At this stage it is considered that the Inquiry will require five sitting days. Leading Counsel for the Appellant intends to call witnesses covering the following issues as between the Council and the Appellant:

- Landscape Character and Visual Impact
- Area of Local Separation
- Planning Policy and the overall Planning Balance

It is also anticipated that the Appellant will need to cover other areas of expertise arising from third party issues including:

- Highways;
- Ecology;
- Community cohesion
- Cumulative impact of development;
- Flood risk and drainage

4.17 The anticipated 5 sitting days exceeds the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances). Annex K therefore suggests that a Public Inquiry would be necessary. It is firmly contended that this is a case which ought to be dealt with by way of inquiry.