

**PINS REF: APP/X2410/W/23/3316574**

**LPA REF: P/20/2380/2**

**APPEAL BY DAVID WILSON HOMES EAST MIDLANDS**

**LAND AT BARKBY ROAD, QUENIBOROUGH**

**OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT**

Introduction

1. This appeal is made by David Wilson Homes East Midlands (the Appellant) against the refusal by Charnwood Borough Council (the LPA/ the Council) of an application for outline planning permission with all matters reserved save for means of access:

*“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 crossroads).”*

2. The appeal site is approximately 5.82 hectares (ha) in area and lies within a designated Area of Landscape Separation (ALS)<sup>1</sup> outside of the limits of development. It is bound

---

<sup>1</sup> The Site is relatively flat with a high-point of approximately 60m AOD at the eastern boundary with Barkby Road, falling gently towards the western boundary.

on three sides by development: existing houses within Queniborough to the north (Avenue Road, The Riddings and Chestnut Close); To the east is Barkby Road across which lies the new residential development of Barkby Road (Davidsons Homes development, known as Barley Fields); and Queniborough Industrial Estate to the west.

3. Southeast of the appeal site, at the southern extent of Barley Fields, is a gateway sign to the settlement of Queniborough. To the south of the site is open countryside, beyond which is the settlement of Syston.
4. It is agreed that the appeal site is locationally sustainable in principle in transport and accessibility terms. There are a range of local services to meet day to day needs within relatively easy walking and cycling distance of the appeal site (see para.66 of the Planning SoCG). The nearest bus stops to the Site are on Syston Road, some 320m from the development.
5. Similarly, it is agreed that Queniborough is one of the more sustainable settlements within Charnwood to provide for additional growth. It is identified in the CS as an ‘Other Settlement’. There is no policy cap on housing numbers within the ‘other settlements’, indeed at the time of adoption of the plan the indicative figure had already been exceeded.
6. The settlement provides a range of services and facilities including convenience food stores, post office, village hall, scout hut, restaurants and takeaways, public houses<sup>2</sup>. There are several educational facilities in close proximity to the appeal site. Queniborough has a number of parks, areas of public open space and sports grounds. The Council’s Settlement Hierarchy Assessment October 2020 Update (CD5.12) prepared as part of the emerging Local Plan assesses the relative sustainability of all settlements within Charnwood by availability of key services, facilities and accessibility. Queniborough scores 8 points and is clearly one of the highest Other Settlements (third highest), and only marginally (2 points) behind the larger Service

---

<sup>2</sup> A Plan showing many of these facilities in proximity to the appeal site is located at CD8.13

Centres of Barrow upon Soar, Mountsorrel and Rothley, and just 3 points behind the urban areas of Loughborough, Shepshed, Thurmaston, Syston and Birstall (11 points).

7. Further detail regarding the proposed development, site, supporting documents, relevant policy and points agreed/ in dispute are set out in a detailed agreed SOCG. A specific landscape agreed SOCG sets out the agreed landscape position in more detail.

#### Identification of Benefits/ Harms

8. The view of Government could not be clearer – the policy imperative is to “boost significantly the supply of housing”. In addition, the economic benefits which come from a vibrant development industry could not be more important as the nation faces economic uncertainty. The Council is unable to demonstrate a 5 YHLS (SoCG, CD8.49). At the time of preparation of proofs had a 3.04 year supply, now revised to contend 4.27 years in the Council’s rebuttal evidence. Given the timing of production of this document and that it still shows a significant deficit against the minimum requirement of Government it is not considered proportionate by the Appellant to seek an adjournment in order to fully interrogate that contention.
9. It is noted, but robustly doubted, that the Council considers that it will have a 5YHLS on adoption of the emerging LP. That plan is at examination and has had a very rocky ride to date, and is a very long way from being found to be sound<sup>3</sup>. The Council’s contention that it will be adopted and secure a 5YHLS by the end of this year is risible & Q1 of 2025 looks like the earliest possible date for such an eventuality. For the purpose of this appeal, there is no ‘plan led solution’ coming over the hill to resolve the immediate and persistent problems of housing land supply shortfall in Charnwood.

---

<sup>3</sup> The eLP Inspector wrote to the Council on 23 May 2023 (CD 8.17) outlining next steps. Those steps included further work required on the Transport Strategies and Viability Assessment, coupled with a period of consultation on the outcome of that work in advance of the formal consultation on main modifications. The letter noted that additional consultation would also be required on the SA Addendum, and the proposed increase to housing supply and updated completions/supply following a further monitoring year. Thus, the eLP remains the subject of unresolved objections regarding housing requirement and supply, as AB explains in evidence. The plan carries limited weight given these unresolved issues.

10. Accordingly, it is central to the Appellant's case is that the appeal proposal would make a significant and important contribution towards meeting the Council's acknowledged shortfall in housing land supply (general and affordable).

11. This is a scheme with significant benefits in its favour:

- 11.1. The delivery of up to 90 new sustainably located general market homes at a time of acute need (very significant weight)
- 11.2. The provision of a substantial number of much needed affordable homes (40% compliant with Core Policy CS3)<sup>4</sup> (substantial weight). This also represents an enhanced offer against emerging Policy H4 which requires 30% affordable housing provision on greenfield sites.
- 11.3. New public open space provision of 1.44 ha approx. (25% of the appeal site, not including SUDS), to include provision of a Locally Equipped Area of Play (LEAP) and green link through the site. The amount of POS is 36% greater than that required by policy<sup>5</sup> (significant weight).
- 11.4. Contributions for: new/enhanced provision in Queniborough e.g., NEAP (c.£143k), outdoor sports provision in Queniborough (football/rugby/cricket/tennis) (c.£48k), provision of allotments within Queniborough (c.£17k) (significant weight).

---

<sup>4</sup> The CS seeks to provide 180 affordable homes a year through CS3, based on evidence in the out-of-date 2014 SHMA. The 2017 HEDNA increases the figure to 384 dpa, the 2020 HNA increases the figure again to 469 dpa. The most recent 2022 HENA increases the figure further to 827 dpa. As demonstrated in Mr Stacey's Proof, the LPA have an acute need for affordable housing within Charnwood Borough and Queniborough. Needs have increased almost 5-fold since 2011, whilst delivery has fallen persistently short of meeting identified needs – with delivery since the start of the CS in 2011 averaging just 173 affordable home pa, and just 137 dpa net of Right to Buy sales, with the past 2021/22 monitoring year falling way short of this, delivering just 35 net affordable homes. The result of this is that hundreds of households are not having their needs met.

<sup>5</sup> 1.44ha provided on site, against a requirement of 1.06ha.

- 11.5. Economic benefits - construction phase and long-term impacts (moderate weight).
- 11.6. Environmental benefits of new native tree planting and grassland, wildflower meadows, with substantial landscaping through increased tree cover to the southern boundary, including an additional 10m tree belt, (significant weight).
- 11.7. Biodiversity net gains of 12%<sup>6</sup> net gain in respect of habitat creation and 151.45% for hedgerows - materially in excess of the imminent target 10% Biodiversity Net Gain (significant weight).
- 11.8. A new, sensitively designed edge to the settlement and the creation of a more positive, and softened, interface to the countryside; rather than the ad hoc arrangement of vegetation and fencing along the site boundary creating what is currently a harsh urban edge (significant weight).
- 11.9. Spin off benefits from the necessary off-site highway works at the Queniborough Crossroads. The widening of the highway and footpath along the western side of Rearsby Road require the removal of non-TPO'd two sycamore trees. Replacement planting on a 3 for 1 basis, totalling £2,700 is agreed. This is secured through the planning obligation<sup>7</sup> (moderate weight); along with an additional contribution for future tree maintenance of £5,000, to secure arboricultural management of the trees along Rearsby Road and Queniborough Road. The management of those trees will help preserve the existing character of the area (moderate weight)

---

<sup>6</sup> 7.37% if the off-site planting to the south is discounted.

<sup>7</sup> A Concept Tree Planting Plan (Appendix 6 Arboriculture Note) shows the possible location of the additional tree planting which could partly occur within the vicinity of the crossroads if desired by the Local Highway Authority.

### Reasons for Refusal (“RfR”)

12. The LPA identified 2 RfR regarding the appeal proposal (see Decision Notice at CD4.01). It is agreed that RfR2 can be addressed through proposed planning obligations (para 24 SoCG sets out narrowed HOTs – healthcare remains contested by the IBC).
13. The Inspector has identified the main issues as follows:
- i. Housing land supply and the policy implications;
  - ii. The effect of the development on the character and appearance of the area including the Area of Local Separation; and
  - iii. Whether the development would provide acceptable contributions towards infrastructure.

### Housing Land Supply

14. It is agreed between the parties that the Council cannot demonstrate 5 years of supply, the CS has failed to deliver as planned and there is no imminent plan-led solution to address housing needs.
15. Policy CS1 of the Core Strategy (CD5.03) sets the development requirements for Charnwood over the period 2011-2028. This includes the provision of at least 13,940 dwellings, equivalent to 820 dwellings per annum, derived from the 2014 Strategic Housing Market Assessment (SHMA). A significant proportion of this directed to 3 SUEs. The three SUEs should have delivered some 3,635 homes by this point but the Council’s HLS record notes that only 32 homes have been completed<sup>8</sup>. Further, the CS anticipated SUE delivery of 7,035 new homes by end of Plan period in 2028. Instead, it is now claimed that they will deliver just 2,180 new homes (as clarified in the LPA

---

<sup>8</sup> Figure taken from the Councils’ HLS rebuttal.

HLS Rebuttal). This means that they are 4,855 dwellings short of their own CS delivery target.

16. The current limits to development in the 2004 LP were prepared to reflect a level of housing need derived from the Leicestershire Structure Plan (1991-2006), adopted in 1994, some 29 years ago. That housing need, at 556 dwellings per annum, is approx. half of the current annual need at 1,105 dwellings. The current Limits to Development for a plan period commencing over 30 years ago are clearly inappropriate for meeting current housing needs and are plainly seriously out of date.
17. The QNP (CD5.06 - made June 2021) provides updated limits to development. However, these updates merely reflect grants of permission. The QNP does not have its own housing requirement and so the limits to development are not updated to reflect any updated requirement. The QNP relies on the CS housing requirement – which is out of date. Of course, the fact that there is no QNP housing requirement means that the protection offered by NPPF para.14 is not engaged.
18. The out of date limits to development are in the process of review as part of the ELP, which includes allocation of several sites beyond both the LP and QNP limits to development. However, the examination of the eLP is yet to conclude, with significant differences between the parties regarding the timescales for the conclusion of this. In any event, it is common ground that settlement boundaries policies, in the 2004 LP and the 2021 QNP are out-of-date, due to them being based on out of date housing needs. As such only limited weight can be afforded to settlement boundary policy conflict.
19. Acknowledgment of the reality of the settlement boundary policy conflict can be found in the fact that the Council has been consistently breaching Policy ST/2 by approving developments beyond the defined limits. A few examples within Queniborough parish alone include: Queniborough Lodge – 125 dwellings, DWH The Millstones – 101 dwellings and Davidson’s Barley Fields – 175 dwellings. + extension of Davidson’s Barley Fields – 50 dwellings

20. The tilted balance is engaged. The housing requirement in the current Development Plan is unequivocally out of date. There is a substantial and immediate shortfall of market and affordable housing and no plan-led solution to address the shortfall. The inescapable conclusion is that housing supply is significant issue in this appeal and a consideration of substantial weight in the planning balance.

Main Issue: Area of Local Separation

21. The appeal site is located within an ALS and as such policies CT/1, CT/4 and Core Strategy CS11 are all engaged, however, as AB's evidence demonstrates there are inconsistencies within these policies.
22. It is agreed that there is conflict with CT/1, as land is being developed outside the limits to development. However, this policy is out of date because the Limits to Development of the 2004 Local Plan, derived from the Structure Plan housing requirements adopted in 1994 are to be out of date. Effectively, as AB explains, CT/1 represents an outright ban on open market housing within Countryside, Green Wedge and ALS. Only limited weight can be afforded to this policy conflict.
23. CT/2 is not relevant because, as AB explains, this policy relates to areas defined as countryside and this appeal site is not defined as countryside on the proposals map. It is defined as ALS.
24. There is 'first blush' breach to policy CT/4 but no breach to its purpose. AB draws on the decision in Land off Mountsorrel Lane, Rothley to substantiate her view in this respect. AC confirms that there would not be a narrowing of the narrowest gap in physical terms. Consistent with other Inspector's AB considers that CT/4 requires a judgment to be made. Her considered view, drawing on AC's opinion is that the proposal would conflict with the policy, but when considered more closely, the

---

<sup>9</sup> These two developments lie adjacent to Syston but within Queniborough Parish.



development would nonetheless maintain an adequate area of separation between Q and S. Despite the RfR, the ALS main purpose is to prevent neighbouring settlements from merging/coalescing. The appeal proposals would not result in the neighbouring settlements from merging or coalescing. Accordingly, AB considers there to be no breach to the ‘purpose’ of Policy CT/4, an approach which is shared by the SOS/Inspector in Land off Mountsorrel Lane, Rothley (CD6.08, para 8.20).

25. Further and in any event, CT/4 must be out of date, for the same reason that CT/1 is out of date: limits to development and ALS boundaries are out of date and not defined so as to meet actual housing needs. This point is corroborated by CBC approving numerous residential schemes within various ALS’s in breach of CT/4 (see AB PoE at 5.72).
26. In this appeal the Council have inexplicably changed track and now claim that the policy is consistent with the NPPF warranting no reduction in weight. This cannot be right. CT/4 is not consistent with NPPF 174, or indeed with its successor policy CS11 because of its restrictive approach to development in the countryside. This position is endorsed by the findings in the Cossington Road, Sileby appeal decision (CD6.07, para. 72 & 73).
27. CS11, is the most important policy to consider in relation to the ALS. The supporting text to Policy CS11, at paragraph 7.15 (CD5.03, p.67) states: *“The retention of Areas of Local Separation will be balanced against the need to provide new development, including new homes, in the most sustainable locations”*. In other words, ALS are a planning tool, and a balance is needed to ensure delivery of new homes. It follows that this must be particularly true in circumstances where the council are not delivering on its housing needs. CS11 allows for a judgment to be made to the extent to which: *“new development protects landscape character and to reinforce sense of place and local distinctiveness”*; *“new development maintains the separate identities of towns and villages”* and whether *“new development clearly maintains the separation between the built-up areas of these settlements”*. AB and AC consider that the development accords with CS11 and affords the policy moderate weight.

28. Policy Q6 of the QNP largely reflects CS11 in that it does not preclude the principle of all development within the countryside or ALS, with development acceptable if it clearly maintains separation between Queniborough and Syston. AC demonstrates that the proposal would protect the character of the landscape and countryside beyond the site. It is firmly submitted that the new development would maintain separation and thus the separate identities' of both Queniborough and Syston in the same way that proposed allocations for residential development also maintain separation. There is no material conflict with Policy Q6.
29. AC acknowledges that the proposal would physically extend development into the ALS. However, AC goes on to explain that the key point is whether the various parcels of land within the ALS are performing in their role of maintaining separation between the two settlements. He considers that the site which would accommodate the proposed housing dwellings has only a 'limited' role in realising the function of the separation policy – an unsurprising conclusion given that it is bounded on three sides by existing development. So, whilst there would be some physical loss, the actual and perceived sense of separation would not materially change with the proposed scheme in place. The actual physical distance in terms of the gap between Queniborough and Syston is defined by the southernmost points of Queniborough and the northernmost point of Syston.
30. This narrowest gap along Melton Road would remain unchanged and as such, there would be no narrowing of this gap in physical terms. It is noted, but regretted that this obvious (and fair) point is missing from Mr Neesam's first proof and bears only a mention but not any analysis in his rebuttal. The Reason for Refusal states that coalescence would occur. There is no evidence to substantiate this proposition. The appeal scheme would not materially change the perceived sense of separation between the settlements of Queniborough and Syston and there would be no change to the separate identities of the two villages. They would remain perceptually and physically distinct.

31. Ultimately AC concludes that there are no landscape and or visual reasons for refusing planning permission for the proposed residential scheme on land adjacent to Barkby Road. The reason for refusal alleges harm in combination with other development upon the countryside and the ALS which in turn would impact on the identity of both Queniborough and the individual identity of Syston and as such cause coalescence between these two settlements nor maintain their separate identities. The Officer's report makes no mention of any identified harm in combination with other development which is surprising if this were deemed to be so significant to be raised in a reason for refusal. There is no evidence to substantiate impact on the individual identity of Syston with the scheme in place. The physical distance between the two settlements at their closest point would remain unchanged along the Melton Road with countryside between the two which would prevail unchanged with the scheme in place. There is no evidence to support the proposition that the two settlements would coalesce with the proposed scheme. Again – we look forward to some clarity from Mr Neesam on the Council's resolved case of cumulative effects giving rise to actual coalescence.
32. AC's evidence explains that the site and its surroundings and Queniborough all fall within the High Leicestershire NCA 93 and locally the Wreake Valley landscape. Limited off-site works are proposed in terms of highway improvements to enable this scheme to come forward. Apart from this limited change, the key characteristics that define the local landscape character beyond the site would remain physically unaffected (including experiential aspects). There would be no material change to the landscape character of the area beyond the site with the proposed scheme in place. The effect on landscape character beyond the site would be negligible.
33. AC explains that the appeal scheme would have some limited and highly localised visual adverse effects. However, once the green infrastructure is established and has the opportunity to mature, the proposals would have a more positive screening effect with regard to the site and as appreciated visually within the local environs. Importantly, the scheme would not materially impinge in visual terms upon the existing

visual relationship between the Queniborough and Syston settlement further to the south, an aspect that the Council seeks to protect.

34. The proposals are in outline and, as the OR concluded, the indicative details demonstrate that an appropriately designed development can be achieved at this site. Mr Ward now advises that the proposals would not respond positively to their context and reinforce a sense of place (policy CS2). Mr Ward considers that when assessed against EV/1, the proposals do not (criteria i) respect the form of existing settlements and the open and undeveloped countryside.
35. This is wrong. The proposed scheme is designed to be of high quality. Reserved matter applications give the Council absolute control over design. The appeal scheme would respond positively to the local urban context of Queniborough and reinforce its sense of place thus making a positive contribution to the locality whilst maintaining open and undeveloped countryside between Queniborough and Syston. In fact, as AC demonstrates, the scheme would not only respect but bring about some enhancement to the character of the locality regarding landscape. The site is proposed to accommodate a residential neighbourhood which as a high-quality scheme, would reflect the local vernacular architecture and which would be in keeping with other residential areas associated with Queniborough. Much of the site would form substantial green infrastructure, which would bring about a degree of change in character terms from the arable fields. The whole green infrastructure would be more in keeping with the area with its new grassland areas together with tree-belts, pond and improved recreational opportunities. Such change to the character of the site would bring about a degree of change and enhancement, which would be beneficial in nature.
36. The proposed scheme would comply with Policy CS2 and LP EV/1 and the introduction of this issue at the eleventh hour by the Council is totally misconceived.

Main Issue: Contributions

37. Most of the contributions are now agreed.

38. Two unilateral undertakings address the following matters:

- i. UU to the County with the Tree Replacement Contribution and Tree Maintenance Contribution
- ii. UU to the Borough for the Off Site Landscaping

39. The tree replacement contribution of £2,700 was requested through the consultation response. The tree maintenance contribution is for £5k, to be used if required.

40. In the bilateral s106, two matters remain for resolution:

- i. the standards to which the Affordable Dwellings should be constructed – lifetime homes currently sought on all AH provision, and
- ii. open space – requesting confirmation appellant cannot be required to submit two schemes (currently sought through S106 and condition).

41. Policies CS3, CS13, CS17 and CS24 of the Core Strategy requires the delivery of appropriate infrastructure to meet the aspirations of sustainable development either on site or through appropriate contribution towards infrastructure off-site relating to a range of services. The Appellant's case is that appropriate infrastructure has been provided, as detailed in AB's PoE (at section 7, p.45).

42. Further to a settlement deed agreed in the context of judicial review proceedings (CO/1744/2023), Leicestershire County Council and the Appellant have agreed all education and highways infrastructure contributions (as well as library and waste contributions) for this appeal. Further, the parties are now agreed that LCC's Interim Strategy is not an adopted policy. The Consent Order and Settlement Agreement will be placed before the inquiry as CDs.

43. There is a dispute regarding the appropriate amount of healthcare contribution. The Appellant's case, advanced by BH, is that the two surgeries in Syston are accepting

new patients and are not at capacity. There is no evidenced deficit in places and so no contribution is necessary to make the development acceptable in planning terms. There is no adequate justification for the healthcare contributions sought by NHS West Leicestershire CCG.

### Conclusion

44. In conclusion, the Council cannot demonstrate a 5-year supply of housing land. There is significant shortfall and no sensible plan-led solution in place or imminent to address the shortfall. In favour of the appeal are significant economic, environmental and social benefits. The appeal benefits are substantial whether or not the tilted balance is engaged. They are forceful material considerations which clearly outweigh the partial conflict with the development plan.
45. Although there would be limited conflict with the Development Plan the most important policies are out of date. There are no landscape and or visual reasons for refusing planning permission.
46. The balance, tilted or not, is overwhelmingly in favour of granting consent for this sustainable scheme; and it is firmly submitted that this should be the outcome of this appeal.

*Paul G Tucker KC*

*Constanze Bell*

**12<sup>th</sup> June 2023**

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS

**APPEAL BY DAVID WILSON HOMES EAST MIDLANDS**

**LAND AT BARKBY ROAD, QUENIBOROUGH**

**COUNSEL:**

**Paul G Tucker KC**

**Constanze Bell**

**INSTRUCTED BY:**

**Helen Bareford RTPI, Planning Manager, David Wilson Homes East Midlands**

**WITNESSES:**

**Planning: Angela Brooks B.A. (Hons) DipTP MRTPI – Partner, Fisher German**

**Landscape & Visual Impact: Andrew Cook BA (Hons) MLD CMLI MIEMA CEnv – Co-Founder and Executive Director, Pegasus Group**

**Affordable Housing: James Stacey BA (Hons) DipTP MRTPI – Managing Director, Tetlow King**

**Healthcare Provision: Ben James Hunter BA DipMS – Associate Director, Education Facilities Management Ltd**

**Solicitor with conduct of S106/ UU: Kate Radford – Senior Associate, Eversheds Sutherland**