

**APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY**

**PLANNING ACT 1990 IN RELATION TO**

**LAND AT BARKBY ROAD, QUENIBOROUGH,**

**LEICESTERSHIRE**

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

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

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**OPENING SUBMISSIONS ON BEHALF OF**

**CHARNWOOD BOROUGH COUNCIL**

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**INTRODUCTION**

1. This inquiry comes shortly before the anticipated adoption of the Draft Charnwood Local Plan 2021-2037 in October to December 2023 (“the emerging LP”). The appeal site is not allocated for housing in the emerging LP and the Area of Local Separation (“ALS”) that would be eroded by development of either the appeal scheme or the revised scheme is protected in it.

**MAIN ISSUES**

2. Following the Case Management Conference (“the CMC”), the Inspector sent a Post-Conference Note, in which she indicated that the main issues in the inquiry were likely to be:
  - a. The effect of the development on the character and appearance of the area including the Area of Local Separation (“Main issue 1”);

- b. Housing land supply and the policy implications (“Main issue 2”); and
  - c. Whether the development would provide acceptable contributions towards infrastructure (“Main issue 3”).
3. In addition, the Inspector said that the inquiry would further need to consider the planning balance and address the concerns of interested parties.
4. Before turning to these, I will briefly discuss the Council’s position on whether the Appellant’s revised scheme should be permitted without consultation.

### **Revised scheme**

5. The Appellant decided to revise the appeal scheme shortly before the Proofs were due to be submitted, essentially by guaranteeing additional tree planting in an area of land beyond both the red and the blue lines of the scheme.
6. The Appellant has argued that it is not a revised scheme at all. However, the additional planting will have an impact on the appeal scheme and its effects, including in ways that are not immediately obvious.
7. For instance, the Appellant argues that the revisions would enhance the biodiversity net gain (“BNG”) of the proposed development from 7.37% to 12%.<sup>1</sup> In other words, revised scheme would take the proposed development from below the level that will soon be required under the Environment Act 2021 to above it. Two observations can be made on this:
  - a. **First**, it is clear that the Appellant is willing to rely on the revisions as being part of the scheme under consideration when it suits it to do so; and
  - b. **Secondly**, if the revised scheme is capable of producing a benefit that is not immediately obvious, then it is capable of producing harms that are similarly not readily apparent.

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<sup>1</sup> See Brooks Proof at §7.46.

8. The Council objected to the late inclusion of the revised scheme and argued that there was a need for reconsultation referring to the judgment of John Howell QC (sitting as a Deputy Judge of the High Court) in *R (Holborn Studios Ltd v Hackney LBC* [2017] EWHC 2823.
9. In an email to the main parties, dated 2 June 2023, the Inspector said that she would accept the amended plans and that there was no need for a formal statutory 21-day consultation. However, she asked to the Council to informally notify those who had already expressed an interest. The Council has done this.

**Main issue 1: Character and appearance including the ALS**

10. Main issue 1 relates to the Council’s first reason for refusal (“RFR1”):

“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.”

11. While the Appellant’s revised scheme is an improvement on the appeal scheme, it would still result in a wholesale adverse change in character at the appeal site. What is agricultural land would become urbanised development.
12. There is no doubt that there will be adverse effects, despite the mitigation proposed.

13. Like the appeal scheme, the revised scheme would remove c.5.8ha from the ALS and substantially shorten the physical distance between Queniborough and Syston.
14. This is an important point. The ALS seeks to protect the separate identity of settlements by maintaining predominantly open and undeveloped land between the two settlements.
15. It is not necessarily the width of the ALS that is the most important factor for the ALS to achieve its separation function but rather the qualities of the land within and particularly the safeguarding of predominantly open and undeveloped land.
16. The ALS seeks to protect the predominantly open and undeveloped countryside within it and the appeal site forms part of that open and undeveloped countryside.
17. Further, public footpath I84 is the key means by which the separate identity of Queniborough and Syston may be appreciated.
18. If planning permission were to be granted, the distance over which the predominantly open and undeveloped land between Queniborough and Syston would be reduced by approximately 45%. This is a substantial reduction that would compromise the separate identities of the two settlements.
19. Further, the remaining section of public footpath passing through countryside would be strongly influenced by the edge of Syston and the new edge of Queniborough.
20. While the planting proposed as part of the Revised Scheme would provide assistance in defining the separation of the two settlements, as compared to the Appeal Scheme, it would in itself be a feature that blocked views, thereby reducing the extent of visually open land between them.
21. Further, the main means by which the separation is currently perceived is the public footpath and the additional planting would do nothing to mitigate the reduced distance over which this separation is experienced.

## **Main issue 2: Housing land supply and policy implications**

22. When Proofs were exchanged the Council had not yet published its latest 5 year housing land supply (“5YHLS”) annual monitoring report.<sup>2</sup> This states that as of 1 April 2023, the Council has a 5YHLS of 4.27 years.
23. The Appellant has confirmed that it does not question this figure unless there is a change in national policy.
24. There may well be a change in national policy. The Government announced an intention to publish a revised National Planning Policy Framework (“NPPF”) in the spring. Publication has been delayed while it further considers consultation responses, but it could well be published before the Inspector’s decision letter.
25. According to the track-changed version consulted on the Council would only need to demonstrate a housing land supply of four years to avoid the tilted balance under §11 d) of the National Planning Policy Framework (“NPPF”).<sup>3</sup>

## **Main issue 3:**

26. Main issue 2 relates to the Council’s second reason for refusal (“RFR2”):

“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.”

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<sup>2</sup> CD 5.30.

<sup>3</sup> CD 8.21 at §226.

27. A draft s.106 agreement has now been completed. Assuming that it will be signed and executed appropriately, the Council accepts that the concerns that it set out in RFR2 have now been overcome.
28. While the Council understands that NHS Leicester, Leicestershire and Rutland have further concerns, health contributions were not included in RFR3 and are not part of the Council's case.

### **Planning balance**

29. The Council will soon be able to demonstrate a 5YHLS, either because of the anticipated change in national policy, or because of the adoption of the emerging plan.
30. While the tilted balance applies as things stand, it makes little difference as the adverse impacts significantly and demonstrably outweigh the benefits.

### **CONCLUSION**

31. For the reasons above and in the Council's evidence the Inspector will be respectfully invited to dismiss the appeal and to refuse planning permission.

**Howard Leithead**

13 June 2023

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