



## Appeal Decision

Inquiry held on 6-7 August 2019

Unaccompanied site visit made on 8 August 2019

**by Alex Hutson MRTPI CMLI MArborA**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

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**Appeal Ref: APP/X2410/W/19/3220699**

**Land off Barnards Drive, Sileby, Leicestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Charnwood Borough Council.
  - The application Ref P/18/0659/2, dated 23 March 2018, was refused by notice dated 20 December 2018.
  - The development proposed is "Outline planning application for the erection of up to 228 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Barnards Drive. All matters reserved except for means of access."
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. No address is provided on the application form. I have therefore taken it from the Council's decision notice which accurately reflects the location of the appeal site.
3. The appeal form cites the appellant as 'Mr Gladman Developments Ltd'. However, it has been confirmed that the 'Mr' element is incorrect and that the appellant is 'Gladman Developments Ltd' and thus the same company which made the original application.
4. The application was made in outline with all matters reserved for future consideration with the exception of access. I have considered the appeal on this basis and have treated the submitted Development Framework Plan, which indicates a possible layout, as indicative only.
5. The appellant initially indicated an intent to counter the Council's contention that it can demonstrate a five year housing land supply. Nonetheless, the appellant now accepts the Council's position on this matter. I have no reason to take a different view and have determined the appeal on this basis.
6. The Council is in the process of preparing a new Local Plan. However, as this is at a very early stage, I afford it little weight.

7. The Government made a number of changes to its Planning Practice Guidance shortly before the opening of the Inquiry. The main parties confirmed during the Inquiry that in their view the changes had no material bearing on the consideration of the appeal. I have no substantive reasons to consider otherwise.
8. Leicestershire County Council (LCC) was granted 'Rule 6' status. Its representative attended the Inquiry for the initial openings and subsequently for discussions on planning obligations only, as this is where its main interests lie.
9. One of the Council's reasons for refusal on its decision notice relates to the lack of a legal mechanism to secure an appropriate level of affordable housing and necessary contributions towards infrastructure and services. The appellant has subsequently provided a completed and certified unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 to address these matters and thus, as agreed by the Council, this reason for refusal has now fallen away. I am satisfied, on the basis of the written evidence and oral evidence I heard during the Inquiry, that the provision of the UU are compliant with the Community Infrastructure Levy Regulations 2010 (as amended) and can be taken into account in the determination of the appeal.
10. With the agreement of the Council, the appellant and interested parties, I undertook an unaccompanied site visit on 8 August 2019. As well as viewing the site and its surroundings, this included visiting and observing a number of local roads and junctions.
11. Subsequent to the close of the Inquiry, the Council brought to my attention a High Court judgment<sup>1</sup> dated 2 September 2019 (Paul Newman New Homes Ltd High Court judgment). I have given the appellant and LCC an opportunity to comment on this matter and have had regard to any comments made as part of my consideration of the appeal.
12. Subsequent to the close of the Inquiry, the Council and Sileby Parish Council (SPC) provided me with the Report by the Independent Examiner in respect of the examination of the Sileby Neighbourhood Plan 2018-2036 (SNP). In it, the Examiner recommends that the SNP should proceed to a referendum subject to some moderations. The appeal site lies outside of the settlement limits as identified by the SNP and as such, the proposal would be contrary to Policy G1 of the SNP which seeks to limit development in the countryside to certain uses which do not include the type of development proposed. However, given that there are some modifications to be made to the SNP (albeit not to settlement boundaries), that it will go before the SPC for approval on 3 October 2019 and that it has not yet proceeded to a referendum, the conflict with the SNP, whilst not altering my overall decision, adds some weight to it.

### **Main issue**

13. The main issue is whether the location of the proposal would be acceptable having regard to local and national planning policy.

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<sup>1</sup> Paul Newman New Homes v SSHCLG [2019] EWHC 2367 (Admin)

## Reasons

14. The appeal site comprises two large agricultural fields and adjoins the settlement of Sileby. The proposal seeks outline planning permission for the erection of up to 228 dwellings on the appeal site along with other elements, including public open space. Vehicular access would be provided from Barnards Drive, a residential cul-de-sac.
15. Planning law<sup>2</sup> requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the Borough comprises the Charnwood Local Plan 2011-2028 Core Strategy (CS), adopted in November 2015, and saved policies of the Borough of Charnwood Local Plan 1991-2006 (LP), adopted in January 2004.
16. CS Policy CS1 sets out the development strategy for the Borough. It identifies that provision will be made for at least 13,940 new homes during the plan period and that the priority location for growth will be the Leicester Principal Urban Area with the majority of remaining growth at Loughborough and Shepshed. Sileby is one of seven settlements identified within CS Policy CS1 as Service Centres, which come next in the settlement hierarchy. The policy sets out that the Borough will plan positively for the role of Service Centres, including by providing for at least 3,000 new homes within or adjoining these settlements, by safeguarding services and facilities and by responding positively to sustainable development which contributes towards meeting the development needs of the Borough.
17. The supporting text to CS Policy CS1 provides a helpful insight into the expectations of this policy insofar as it relates to Service Centres. It notes that, at the time, there were commitments for around 3,500 homes in such settlements and that this was sufficient to meet the levels of planned provision. As such, the supporting text notes that the Council only expects to see small scale windfall developments within settlement boundaries between 2014-2028.
18. It is my understanding that housing commitments at the Borough's Service Centres, as of 1 April 2019, has subsequently increased to 4323 homes. In my view, this is well beyond the quantum of housing envisaged in CS Policy CS1 to be provided at Service Centres. Moreover, of these, 1006 have been committed at Sileby alone. On the basis that there are seven Service Centres within the Borough, such a level of commitment in respect of just one of these settlements seems to me to be overly disproportionate. To provide a further 228 homes adjoining Sileby would add materially to the already excessive level of housing commitments in Service Centres, when compared with levels the CS plans for, and to the disproportionate level of housing provision within Sileby. In addition, given that the Council can demonstrate a five year housing land supply against the housing requirements of the CS, which is less than five years old, the proposal is not necessary to meet the housing needs of the Borough on this basis. Nor is it evidently needed in order to safeguard Sileby's services and facilities.
19. As such, whilst it would adjoin Sileby, the proposal would be contrary to the development strategy for the Borough as envisaged by CS Policy CS1 and

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<sup>2</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

would thus conflict with this policy. I note that the Inspector in the Land East of Seagrave Road, Sileby case<sup>3</sup>, which involved a proposal for up to 195 homes, reached the same conclusion.

20. In addition, the proposal would conflict with saved LP Policy CT/1, which seeks to strictly control development in the countryside and to limit it to certain types, excluding that proposed. Though not cited on the Council's decision notice, the proposal would also conflict with saved LP Policy ST/2, a policy referred to in both the Council's and the appellant's evidence, which requires built development to be confined to allocated sites and other land within development limits. Though conflict with saved LP Policy CT/2 is cited on the Council's decision notice, I am of the opinion that this policy is not of relevance as it relates to development acceptable in principle as defined by saved LP Policy ST/2, which as I have already stated, does not include the type of development proposed.
21. The level of housing commitments at Service Centres over and above that planned for, including at Sileby, has largely come about as a result of the Council's past inability to demonstrate a five year housing land supply. Such a position has previously engaged the presumption in favour of sustainable development, currently as set out within Paragraph 11.d)ii of the National Planning Policy Framework (the Framework), as was the case in the abovementioned Seagrave Road decision. This sets out that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (applicable where the Council cannot demonstrate a five year supply of deliverable housing sites), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
22. As there is no dispute that the Council can demonstrate a five year housing land supply, this is not a reason to engage Paragraph 11.d)ii of the Framework in this case. Nonetheless, the appellant takes the view that the policies which are most important for determining the application are out of date for other reasons, a view that the Council does not share, and thus Paragraph 11.d)ii of the Framework is engaged in any event.
23. There is some dispute between the Council and the appellant as to which policies are the most important for determining the application. However, in my view, these are the ones which are being considered as part of this appeal and which are cited above, though, additionally, CS Policy CS25 which generally reflects the Framework's presumption in favour of sustainable development is also important.
24. Saying that, of these policies, I consider CS Policy CS1 to stand out from the others, being a recently adopted policy setting out the development strategy for the Borough, and thus to be of the greatest importance of these for determining the application. This policy was found to be sound and Framework compliant by the CS examining Inspector, and was thus not out of date and carried full weight at the time of the adoption of the CS. This is notwithstanding that the policy to some extent relies on settlement boundaries as identified by saved LP Policy ST/2 which only sought to plan for housing

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<sup>3</sup> Appeal Ref: APP/X2410/W/16/3152082- Land to the East of Seagrave Road, Sileby, Leicestershire, dated 10 July 2018

needs up to 2006 and that there was a future intention to produce a site allocations document for Service Centres. It is also notwithstanding that settlement boundaries have been breached in order for the Council to be able to demonstrate a five year housing land supply. In any event, CS Policy CS1 does not operate by reference to settlement boundaries alone as it provides for a degree of development to adjoin these, albeit that in my view, the intended degree has been surpassed.

25. On this basis and that the Council can demonstrate a five year housing land supply and has performed well against the Government's Housing Delivery Test, I consider CS Policy CS1, the policy of greatest importance in this case, to be effective and not out of date, as was the case on the adoption of the CS. Thus, I afford it full weight at this time. I also note that the Inspector in the very recent East Goscote<sup>4</sup> case, which involved the same appellant, found this policy to be not out of date and I recognise the importance of consistency in decision making. Furthermore, although that case related to a proposal for housing in a lower tier settlement, such a matter was not central to the Inspector's findings on the up to date status of CS Policy CS1.
26. Given this, and having regard to the very recent Wavendon High Court judgment<sup>5</sup>, which the Paul Newman New Homes Ltd High Court judgment affirms, I consider the 'basket' of most important policies as a whole to be not out of date. This is regardless of whether or not I was to find saved LP Policies CT/1 and ST/2 to be out of date, and thus, I do not consider it necessary for me to make a detailed assessment of them in this regard. Consequently, Paragraph 11.d)ii of the Framework is not engaged, and as such nor is CS Policy CS25. The appeal should thus be considered under the normal planning balance, as was the situation in the East Goscote case. Additionally, it is somewhat surprising that, as little or nothing has materially changed in the short intervening period, the appellant continues to pursue an argument to the contrary.

#### *Other matters*

27. The provision of up to 228 dwellings in an accessible location, of which at least 30% would be affordable, would make a useful contribution to housing supply within the Borough and would support the Government's objective to significantly boost the supply of homes. Notwithstanding that the Council can demonstrate a five year supply of housing, I afford such housing provision substantial weight. The appellant asserts that the proposal would generate a construction spend of over £22.4 million, would create 192 full time jobs per year over 7 years, would inject an additional household spend in the local economy of £6.2 million per year and would house approximately 273 economically active residents. I afford substantial weight to these benefits also.
28. The provision of new public open space, though primarily required to serve any future occupiers of the proposal, would also be likely to be an attractive and useful resource for nearby existing residents. It, along with additional landscaping, would enhance the ecological value of the appeal site and would deliver a net biodiversity gain. Financial contributions for the improvement of existing facilities for young people, the improvement of sports facilities, the

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<sup>4</sup> Appeal Ref: APP/X2410/W/18/3214382- Melton Road, East Goscote, Leicestershire, dated 16 July 2019

<sup>5</sup> Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)

- provision of allotments and the upgrading of healthcare and library facilities would also have some wider community benefits. Together, I afford these benefits moderate weight. Other contributions, including those for education, bus passes, travel packs and civic amenity, weigh neutrally in the planning balance as they would simply assist with mitigating the effects of development.
29. I acknowledge that the Council has not raised any concerns beyond those addressed under the main issue, including in respect of character and appearance, highway safety/capacity, archaeology, heritage, flood risk and neighbour living conditions. On the basis of the evidence before me and my own observations of the appeal site and its surroundings, and having carefully considered interested party concerns in respect of some of these matters, I have no substantive reasons to take an alternative view.
30. I also note that it is common ground between the main parties that although great crested newts, a European Protected Species (EPS), has been identified to be using ponds in the surrounding area, the likelihood of them utilising the appeal site and being harmed as a result of the proposal would be minimal. Furthermore, that any risk in this regard could have been further minimised through the use of a suitably worded planning condition, had I been minded to allow the appeal, and that it is likely that an EPS licence from Natural England would not be required as a result. Though it is not necessary for me to consider the EPS licence matter in any further detail, had I been minded to allow the appeal, I see no compelling reasons why such an approach would not have been acceptable.
31. The appellant highlights that the Government's standard method for assessing local housing need and the Leicester and Leicestershire Strategic Growth Plan, based on the Leicester and Leicestershire Housing and Economic Needs Assessment 2017 (HEDNA), indicate a higher level of housing need within the Borough than that identified in the CS. However, whilst this might be the case, having regard to Paragraph 73 of the Framework, the standard method to assess local housing need is relevant where strategic policies are more than five years old, which is not the case in this appeal. Furthermore, the Leicester and Leicestershire Strategic Growth Plan and HEDNA are non-statutory publications which underpin the preparation of the new Local Plan for the Borough and have not been formerly tested or examined. As such, I afford only limited weight to these matters at this time.
32. I have been provided with an appeal decision<sup>6</sup> relating to Brimington, Chesterfield, in which the Inspector allowed a housing scheme, albeit that it conflicted with the relevant Council's Core Strategy policies setting out its development strategy and where the Council could demonstrate a five year housing land supply. Nonetheless, it relates to a different local authority and thus a different planning policy context. Also, the Council's strategic policies in that case were more than five years old and had not been reviewed. In addition, I note that the Inspector raised a concern that the Council could not demonstrate how the housing requirements in its service centres could be met. This is evidently not the case in Charnwood. Thus, the circumstances of that case are not helpfully comparable to those of the case before me and it does not alter my views on how the current appeal should be determined.

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<sup>6</sup> Appeal Ref: APP/A1015/W/19/3223162- Land to the north west of Northmoor View, Brimington, Chesterfield, Derbyshire, dated 5 August 2019

### **Planning balance and conclusion**

33. I have found conflict with a number of policies of the CS and LP, including CS Policy CS1 and the development strategy it envisages for the Borough. I therefore find conflict with the development plan as a whole. I find CS Policy CS1 the policy of greatest importance for determining the application and I find it to be effective and not out of date. Thus, I afford such policy conflict significant weight and to develop the appeal site as proposed would be at odds with and would undermine public confidence in the plan led system. The Framework recognises that the planning system should be genuinely plan led.
34. I recognise that the proposal would provide a number of benefits, which in some cases, including in respect of the level of market and affordable housing proposed, carry substantial weight in its favour. However, such benefits would not be sufficient, in my view, to outweigh the conflict with the development plan and the development strategy for the Borough. This would be the case even if an above policy compliant level of affordable housing of 35% were to be provided. Moreover, there are no persuasive material considerations to indicate that the proposal should be determined other than in accordance with the development plan.
35. Accordingly, for the reasons set out above, and having regard to all other matters, I conclude that the appeal should be dismissed.

*Alex Hutson*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Thea Osmund-Smith, of Counsel                      Instructed by Gladman Developments Ltd

She called:

Peter Dutton BA (Hons), MCD, MRTPI	Senior Planner, Gladman Developments Ltd
David Stoddart BA (Hons), CMILT, MIHT	Associate Director, Prime Transport Planning
Jamie Woollam BSc (Hons), CEcol, MCIEEM	Associate Ecologist, CSA Environmental

### FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes, of Counsel                      Instructed by Charnwood Borough Council

He called:

Lewis Marshall MRTPI	Principal Planning Officer, Charnwood Borough Council
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### FOR THE COUNTY COUNCIL (RULE 6 PARTY):

Anthony Cross                                      Head of Law, Leicestershire County Council

### INTERESTED PARTIES:

Cllr Julie Jones	Sileby Parish Council
Cllr Elizabeth Astill	Sileby Neighbourhood Plan Advisory Committee
BA Hons Landscape Architecture	
MA History	
Cllr Andrew Pailing	Local Councillor
Sue Collington	Local Resident
Elizabeth Parkinson	Local Resident
Lynn Sheperdson	Local Resident
Lynn Hill	Local Resident
Liz Jones	Local Resident
Ken Jones	Local Resident
Edward Sherriff	Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

INQ1: 'Fixing our broken housing market' publication - Department for Communities and Local Government, February 2017  
INQ2: David Stoddart qualifications and experience sheet  
INQ3: Jamie Woolam qualifications and experience sheet  
INQ4: Ecology Solutions Ecology Briefing Note  
INQ5: Appeal decision APP/A1015/W/19/3223162- Land to the north west of Northmoor View, Brimington, Chesterfield, Derbyshire, dated 5 August 2019  
INQ6: Appearances on behalf of the appellant sheet  
INQ7: Table showing developments consented in Sileby  
INQ8: Opening statement on behalf of the appellant  
INQ9: Opening submissions for the local planning authority

INQ10: Parish Council presentation

INQ11: Draft unilateral undertaking

INQ12: Final though unsigned/undated version of the unilateral undertaking (retained by the appellant)

INQ13: High Court Consent Order dated 31 July 2017 in respect of the quashing of appeal decision APP/X2410/W/16/3152082 relating to Land to the East of Seagrave Road, Sileby, Leicestershire, dated 27 March 2017

INQ14: High Court judgment- Wavendon Properties Limited v SSHCLG Milton Keynes Council [2019] EWHC 1524 (Admin)

INQ15: Charnwood Housing Supplementary Planning Document adopted May 2017 and updated December 2017

INQ16: Prime Transport Planning response to questions raised by a local resident

INQ17: Additional suggested planning condition from the appellant in respect of ecology

INQ18: Closing submissions for the local planning authority

INQ19: Closing submissions on behalf of the appellant

INQ20: Annotated Sileby Parish Council Village Street Map

### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

1. Completed and certified unilateral undertaking
2. Email from the Council in respect of High Court judgment- Paul Newman New Homes Ltd v SSHCLG [2019] EWHC 2367 (Admin)
3. Appellant's response in respect of the Council's email and High Court judgment- Paul Newman New Homes Ltd v SSHCLG [2019] EWHC 2367 (Admin)
4. Email from the Council dated 26 September 2019 and accompanying Report by the Independent Examiner in respect of the examination of the Sileby Neighbourhood Plan 2018-2036 dated September 2019.
5. Email from Sileby Parish Council dated 26 September 2019 and accompanying Report by the Independent Examiner in respect of the examination of the Sileby Neighbourhood Plan 2018-2036 dated September 2019.