

**APPEAL BY DAVID WILSON HOMES EAST MIDLANDS LTD AND
ANTHONY RAYMOND SHUTTLEWOOD**

LAND AT COSSINGTON ROAD, SILEBY

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANTS

Introduction

1. The case that the Appellant has to meet in this case is comparatively easily stated: whilst the Council can't demonstrate a 5YHLS, and the LPA has no prospect of addressing that deficit in the near future nonetheless it is said that the impact on the C&A of the area and the diminution of the land designated as AoLS together comprise significant and adverse harm to outweigh the tilted balance. One might even say that this is a case where the resolution of the difference between the parties is one that is sufficiently straightforward that it really comes down to whether on site the Inspector concludes that Mr Cook or Mr Higson are right that the separate identities of the two settlements will or will not be unacceptably eroded by the development.
2. Whilst the Appellant is very confident that the judgment on site vindicates the approach of Mr Cook, it is firmly submitted that there are a number of important points by way of initial overview which together mean that Ms Smedley is absolutely right that this isn't a marginal case, but one where the adverse impacts come nowhere close to

displacing the tilted balance when the benefits and harms are properly weighed and then put onto the metaphorical tilted scales.

3. The following ‘big points’ are worth stressing by way of initial overview therefore:

- (i) The titled balance is engaged both because the LPA can’t demonstrate a 5YHLS, but also because, assessed properly, the most important policies for the determination of the appeal are out of date;
- (ii) The out of datedness of key policies and their geographic expression in the settlement boundaries – is of relevance when assessing the weight to be afforded to any conflict with such policies;
- (iii) That is not just true of the settlement boundaries (both the 2004 version and the ‘updated by PPs’ version in the NDP, but also the extent of the AoLS whose extent the CS expressly expects to be a balance between housing need and policy objective¹;
- (iv) That out of datedness of boundaries is evident from
 - The grant of multiple permissions beyond settlement boundaries and in the AoLS;
 - The fact that they are based on development needs that are long since superseded;
 - That they are subject to review in the eLP (noting that the Sileby NDP was not such a review;
 - They haven’t worked to allow sufficient land to be brought forward to meet the minimum requirements of Govt – i.e., 5YHLS and AH needs;
- (v) Despite Mr Gould’s abundant optimism there is no prospect of the current deficit in housing needs being remedied by the imminent adoption of eLP – in reality an adoption in early 2024 seems optimistic. Thus, the only way to meet immediate needs is the grant of PP for the more ‘difficult’ sites – such as Humble Lane²;

¹ Para 4.17 CS

² Outline permission is sought for “*up to 170 dwellings (including affordable housing) with all matters reserved other than access together with associated landscaping and other infrastructure*”.

- (vi) The Site is currently an arable field which reads as a peri-urban/urban fringe environment heavily influenced by the existing urban area. The appeal site lies immediately adjacent to but outside of the existing Limits to Development, with residential development to the north and west, it is therefore as close as practically possible in terms of proximity to the settlement itself and the services within. The allegation of an impact upon landscape character is difficult to understand, especially when coupled with the extensive proposals in respect of the 5.88 Ha of POS (58% of the appeal site area);
- (vii) The actual sense of separation – i.e., the sense of leaving one settlement and arriving at another will in no way be diminished by the development of the appeal site. Indeed, it must be a rare case where the principal way in which that separation is experienced is along a road connecting the settlements – and the development which is said to compromise the ‘gap’ lies well to the north of the road sign which announces arrival at Sileby (heading north) and is nowhere close to the actual narrowest point of the gap. CS11 isn’t breached and the sense of departure and arrival between Sileby and Cossington just isn’t compromised in this case; and even if it was then the meaningful part of the gap isn’t just retained it is strengthened *in exactly the same way as is proposed to the South of the brook by the north of Humble Lane.*

4. So, as we submitted in opening, whilst change in the form of developing a greenfield site may be unwelcome to some, in reality there simply is no harm that would come close to justifying a refusal of planning permission in this case, and certainly not to amount to the ‘very good reason’ to displace the tilted balance. On the contrary, the Appeal Scheme will provide a new high quality residential area with a huge area of public open space in between which can accommodate extensive planting, hedgerow restoration together with different areas of formal and informal recreation for the existing and new residents of the two settlements. It will complement the area of open land proposed at the north end of the Humble Lane scheme and reinforce the separating point of the wooded brook between the settlements in perpetuity. Sileby’s settlement pattern and identity would obviously remain and prevail with the scheme in place

(certainly Officers thought the design and appearance of the Appeal Scheme was comparable to Sileby, see CD 5.02).

5. S38(6) of the 2004 Act, requires an overall judgment regarding whether the proposal is in accordance with the development plan taken as a whole (s.38(2)(b))³. The Appellant's firm submission in closing is that this scheme is in accordance with the development plan when read as a whole and the appeal proposal should be approved without delay and the substantial planning benefits realised as soon as possible⁴. That is especially since the settlement boundaries and the extent of the AoLS are in obvious need of review (even Mr Higson conceded that there was some capacity for residential development within the site – i.e., within the AoLS). As this is a case in which the tilted balance applies, then it follows that the balance is markedly in favour of granting permission for the Appeal Scheme.

Reasons for Refusal

6. The LPA posited two reasons for refusal⁵. RfR 1 concerns landscape matters and alleges harm arising from a loss of an area of local separation, impact to the character of the countryside and the separate identities of the villages of Sileby and Cossington. RfR 2 concerns whether adequate provision is made for open space, education provision and healthcare services and a need to secure affordable housing and an appropriate mix of size and tenure of home by way of legal agreement. From the LPA's perspective the latter is resolved by the s.106; and the former is the **only** basis upon which it invites dismissal of the appeal – despite Mr Gould and Mr Higson's flirting with issues that don't arise from the RfR, such as conflict with CS strategy and 'valued landscape' in a clear case of mission creep.

³ This is essentially the Inspector's fourth main issue: whether any conflict with the development plan and harm arising is outweighed by other considerations.

⁴ As per para. 11 NPPF.

⁵ These RfR correspond to the Inspector's main issues b and c: the effect of the proposed development on the character and appearance of the area in relation to landscape and the Area of Local Separation and whether the proposed development makes adequate provision for affordable housing and other infrastructure requirements.

Reason for Refusal 1: Landscape

7. In terms of reason for refusal 1, AC's compelling evidence firmly establishes that on landscape and visual grounds there are no substantive reasons for refusing planning permission. From an urban design perspective, the Appeal Scheme (both the built and the POS elements) would deliver a quality scheme accepting the fact that it is outline or illustrative (DAS CD1.16), consistent with meeting the need for new & deliverable housing (including 51 affordable units) and the objective of preserving the separate identity of the two settlements.

The Appeal Scheme in Context

8. The Appeal Scheme comprises residential development and substantial green infrastructure which will most likely take the form of naturalistic rural parkland – though the actual form and detail is for the RM stage. The local character area washes over the settlement and the settlement assists in defining the key characteristics of the locality. In the OR, under the heading 'Design and Appearance' when addressing policy CS2, officers note that the illustrative scheme is rightly comparable to Sileby. Policy CS2 does not feature in the reason for refusal. The introduction of residential development in this location is therefore neutral rather than adverse in terms of 'character' as patiently explained by AC.
9. AC's evidence demonstrates that the Appeal Scheme provides the opportunity to create an appropriate POS which will consolidate the sense of separation – in his view this is best achieved by a naturalistic parkland, created against a baseline position of an arable field with planting and hedgerow restoration which reflects guidelines in published LCA. This results in a clearly beneficial effect. Residential properties are pulled back from the eastern boundary to the railway and the southern boundary is reinforced with replanting conifers and replacing ash trees showing decay because of ash die back.

The Effect on Landscape Elements Which Define the Character of the Site

10. The Appeal Scheme will secure the minimal loss of hedgerows for access and will reinstate historic hedgerows (see Arch DBA, CD 1.05 figs. 8-11). It will consolidate the existing and restore former lost hedgerows. The significant net gain of trees will be a major beneficial effect (AC PoE at 4.11 and Masterplan CD2.06), with no trees being removed to facilitate the scheme and substantial tree planting proposed (see Arb Report, CD1.04, Table 1). In fact, this substantial tree planting would patently create a stronger sense of enclosure to the southern part of Sileby and reinforce the perceived sense of separation between settlements.
11. Whilst some arable land will be lost, this resource is ubiquitous and common place in the locality and the creation of small meadow fields results in a major beneficial overall effect. Grassland creation is consistent with the character of AOS west of Cossington Road, and proposed POS associated with Cossington scheme (AC PoE at 4.12). This is entirely consistent with the approach to POS for Clarendon Road and Humble Lane. In terms of topography there will be no material change and the legibility will prevail with the scheme in place (see AC PoE at 4.12).
12. As the Site is currently in private ownership, the substantial recreational space created with naturalistic parkland is a major benefit. A moderate benefit is provided by the surface water attenuation area as a water feature.

The Effect on Landscape Character Beyond the Site

13. As no off-site works are required to enable the scheme to come forward, therefore the physical fabric and character of the landscape beyond the site would not materially change. All the key landscape characteristics identified in the National Character Area NCA 69 Trent Valley Washlands produced by Natural England (CD 6.9) would remain and prevail with the scheme in place. The Appeal Scheme will in fact reinforce the local characteristic of settlement pattern confining villages to the rising ground at the edges of the floodplains and urban expansion prominent in larger settlements along with modern housing (AC PoE at 5.6). The Appeal Scheme will deliver multi-functional green infrastructure, in accordance with the strategy set out in the Statement

of Environmental Opportunity within the NCA⁶. There would be negligible changes to the key characteristics of the NCA beyond the Site (AC PoE at 5.10).

14. At a local level the Appeal Scheme reinforces visible built development on well-defined rising valley slopes (a key characteristic of the Soar Valley Landscape Character Area). There would be a negligible degree of effect upon the wider landscape of the Soar Valley.

The Effect on the AoLS: Actual and Perceived

15. The purpose of the AoLS, is to define the actual separation between two settlements and to capture the visual dimension of separation, a perceived sense of separation which can only be appreciated by members of the public on the ground passing through the area. As AC's evidence demonstrates, the Site presently has a very limited role in achieving the purpose of ALS owing to its physical and visual containment⁷. In terms of actual separation, the Appeal Scheme would not reduce the distance between the southernmost point of Sibleby and the northernmost point of Cossington identified by open undeveloped land (the narrowest gap of 150m). In visual terms, the Site does not play a material role in principal lines of sight across the ALS from public vantage points. Having examined the gap from the local public highways and rights of way, AC's evidence is that in terms of the area proposed to accommodate the appeal scheme, this particular part of the ALS performs a somewhat limited role in maintaining the perceived sense of separation between Sibleby and Cossington. The Appeal Scheme would not materially change the perceived sense of separation between the two settlements, nor would it reduce the narrowest gap. The planting within the open space would actually assist in consolidating the separation of existing communities, and complimenting the planting around the brook, which is stressed by Arup as an important element of the separation of the settlements.

⁶ Which requires the landscape character to be strengthened and enhanced through the creation of multi-functional green infrastructure.

⁷ The significant curtailing of visibility of the part of the site which would accommodate the housing area.

16. It is important to understand precisely what policy CT/4 requires. It is a permissive policy based on two criteria: retaining the predominantly undeveloped character of the area and not reducing the narrowest gap. It is important to note that the first criterion relates to retaining character. It is not a blanket prohibition on development or a requirement to keep sites free from development. It was explicitly agreed by Mr Gould that compliance, as with CS11 requires a judgment, and that it is not an absolute preclusion. Both criteria are met by the Appeal Scheme. There is no conflict with policy CT/4. The Council have previously acknowledged that development can encroach into the ALS and yet still accord with policy CT/4 (see AC RPoE, CD 10.36, and appendices 4, 5 & 6).
17. AS's evidence explains that policy CT/1 relates to development on land outside of the Limits to Development, with restrictive criteria similar to those found in Green Belt policies. In consistently with policy CT/1 represents an outright ban on open market housing within Countryside, Green Wedge, and Areas of Local Separation, it has a direct effect on the supply of housing, and it treats all of those areas as if they comprise 'valued landscape' NPPF parlance. The NPPF is in fact more permissive of development in the generality of the countryside and CT/1 does not reflect this position. As such AS considers it to be inconsistent with the NPPF and is agreed to be out of date by Mr Gould. CT/1 also reflects the Limits to Development of the 2004 Local Plan, derived from the Structure Plan housing requirements adopted in 1994, which are agreed to be out-of-date. It must follow that CT/1 also cannot be up to date on this basis.
18. As CT/1 is out-of-date, only limited weight can be afforded to policy conflict with it. The Council seemingly accept that limited weight can be attached to CT/1 because they have allowed a breach of CT/1 on numerous occasions, approving residential schemes on land outside of the defined Limits to Development (see the Housing Sites Plan (CD ID4)).
19. CT/4 is intrinsically linked to CT/1, with CT/1 setting out those uses that will be acceptable in principle (i.e., forestry related development, diversification of the rural

economy etc) and CT/4 adding further detail regarding how developments acceptable in principle, through CT/1, will be permitted. The policy also defines the AoLS with the appeal site lying within ALS-D. This is similarly inconsistent with the NPPF.

20. In common with CT/1, the Council have allowed breaches to Policy CT/4 by approving numerous residential schemes within various AoLS's (AS PoE at 6.54), as well as having previously considered CT/4 as a policy restricting the supply of housing, and affording it reduced weight – Melton Road, Queniborough (CD7.06 p. A17 or PDF p.17)⁸. Perversely, in this appeal it is alleged that CT/1 does not have a direct correlation with the supply of housing and is given significant weight. This makes no sense. Policy CT/4 represents an outright ban on open market housing within the Area of Local Separation (linked to CT/1), and it is therefore highly relevant to the supply of housing.

21. As the Inspector in the Rothley case⁹ stated:

“the limits to development and ALS (and Green Wedge) boundaries were all drawn in the CBCLP 2004 reflecting housing needs up to 2006 only. Housing needs are obviously greater in 2013 and the emerging CS acknowledges that the ALS boundaries will have to be redrawn as part of the Site Allocations and Development Management Policies DPD process. This also serves to demonstrate the direct link between ALS and provision of housing” (CD7.07, p.51 of PDF, para. 8.19).

22. The Inspector in the Rothley case also considered that the proposals were contrary to CT/4 ‘at first blush’ but when considered more closely it was apparent that the scheme would maintain an adequate area of separation between Mountsorrel and Rothley. He considered the Area of Local Separation as having a strategic role whose main purpose is to prevent neighbouring settlements from merging or coalescing, adding that - If that analysis is correct and there is no breach to the purpose of Policy CT/4 than the technical breach relating to the control mechanism (of the outright ban on market

⁸ See also the Secretary of State’s decision for the appeals for Land off Mountsorrel Lane, Rothley (CD7.07 p.41 or PDF p.51, para 8.17 and 8.19).

⁹ Para. 6.49 AS PoE.

housing in an ALS) ought to have little weight attached to it”. (CD7.07, p.52 of PDF, para. 8.20).

23. The successor policy, CS11, is more explicit about what is agreed to be implicit in CT/4 in that it allows for a judgement to be made about whether *“new development clearly maintains the separation between the built-up areas of these settlements”*. This judgement is not one that can simply be made by looking at a plan; it is more nuanced requiring both qualitative and quantitative factors to be considered, and in particular a judgment formed on site.

24. The supporting text to Policy CS11, at paragraph 7.15 (CD6.03, 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”.

25. CS11 acknowledges that a balance is to be struck. In the present case, there is a need to provide homes, the Council is unable to demonstrable the required supply, and Sileby is a sustainable location. The balance therefore lies in favour of delivering homes, on that part of the site which has capacity to accommodate them without harm to the overall character of the area and the function of the AoLS. CS11 seeks to protect the undeveloped character between settlements, but the retention of such AoLS as undeveloped land needs to be balanced in providing new homes, that means that it is long overdue a proper review to see where that balance lies. Thus, whilst the Council disagree and consider the policy to be broadly consistent with the NPPF such that it can be afforded significant weight, that position is inconsistent with their case in Melton Road, Queniborough (CD7.06), where, under the same lack of 5YHLS circumstances, Officers considered the policy to restrict the supply of housing and afforded breach of that policy only moderate weight (see p.A17 or PDF p.17). AS’s evidence is because it needs review (in the light of the need for more housing) then only limited weight should be afforded to CS11.

26. In any event, AC’s evidence is that the proposed development would in fact maintain and respect the separation between Sileby and Cossington, with significant green

infrastructure provided including the creation of new enclosures as part of a historic landscape restoration scheme. The green infrastructure would be far more in keeping with the local rural farmland with new wildflower meadows and pastoral fields, together with new woodlands, water features and improved recreational opportunities, to be read as part of the countryside, similar to that to the west of Cossington Road. Upon establishment of the landscaping this would further reinforce a sense of physical and visual separation with Cossington to the south. AC's evidence concludes that the physical and perceptual separate identity of Sileby and Cossington would continue to remain and prevail with the scheme in place, as the development would not cause any actual coalescence. Thus, whilst CS11 is likely out of date, AC's evidence demonstrates compliance with CS 11 in any event.

27. Similar to CS11, Policy G2 of the Neighbourhood Plan seeks to reinforce local distinctiveness but goes on to list a whole number of other design related criteria which are specific detailed matters which are patently resolved through subsequent Reserved Matters applications and are therefore of negligible concern in respect of this outline appeal application. As a design principles policy, it is consistent with the NPPF, and full weight can be afforded to it.
28. However, in terms of local distinctiveness dwellings to the north and west of the appeal site are undistinguished and architecturally reflective of the period they were built. The existing street scene is not considered to be of any specific local value and the delivery of new housing is not considered to have a negative impact on valued local vernacular. The indicative layout demonstrates an appropriate scheme set against the existing character, density, and urban grain of the settlement. Moreover, through design it is possible to improve the southern settlement edge of Sileby, through delivery of an outward looking, high-quality development. The current settlement edge of Sileby, particularly to the east of Cossington Road is an obviously negative feature of the settlement in this location¹⁰, with the rear of existing housing and fencing currently

¹⁰ Despite NG's bizarre refusal to accept this obvious point

defining this settlement edge. AS's evidence is therefore that the proposed development represents a scheme in broad compliance with Neighbourhood Plan policy G2.

Valued Landscape

29. The argument that the Site is a valued landscape has seemingly come out of nowhere and was first introduced in the evidence of Mr Higson ('SH'). It is difficult to see how this was not an exercise in attempting to strengthen an otherwise deeply unconvincing argument. Officers and LIVIA authors do not share SH's view that the Site is a valued landscape and nor does AC. SH is very much the outlier in adopting this position. Even the RfR isn't with him on this point.

30. As AC notes GLVIA 3 provides (see box 5.1 and section 4 AC RPoE) a methodology to assess valued landscapes. AC has assessed the Site against all of these factors (RPoE 5.7 – 5.16) and come to rounded view that the field is not a valued landscape as per NPPF. AC also assessed the Site against the criteria set out in the Technical Guidance Note (TGN 02/21) (RPoE 5.19 – 5.33) and again reaches the same conclusion. The worse point for this daft foray on the part of Mr Higson is that strategic planning policy objectives such as gap policies are expressly not part of the consideration of whether landscape comprises valued landscape – when one reads TGN 02/21 properly – even the table that HR took AC to, expressly supports the opposite conclusion to Mr Higson that purely planning designations don't warrant landscape being categorised as 'valued'¹¹.

31. This was in truth a desperate point which would not have been made if the Council's case had truly been otherwise compelling. Indeed it will be remembered that having been instructed, not only did Mr Higson expand the Council's case to allege that the appeal site comprised valued landscape but he also expressly abandoned the Council's

¹¹ Para 30 the TGN expressly states that the presence of a spatial planning designation is not in itself an indicator of high landscape value (see TGN page 12 second bullet point)

own assessment by LUC in 2021 which assessed the landscape sensitivity of the site as ‘low-medium’¹².

Overview on RfR1

32. Overall, RfR1 is not well founded. The purpose and integrity of the area of local separation is essentially retained. The physical narrowest point of the gap would remain unchanged. The perceived sense of separation would not materially change with the proposed scheme in place and the establishment and maturity of the parkland would increase the perceived sense of separation over time, especially when considered from Cossington Road and the ROW network. The proposed scheme would bring about change to the character of the site introducing residential and multi-functional green infrastructure which would reinforce these characteristic elements of the local landscape. There would be no change to the villages of Sileby and Cossington were the Appeal Scheme to be granted permission and the Appeal Scheme would not cause the merging of villages.
33. Reason for Refusal 1 cites conflict with Policy CS1 and alleges that further growth at Sileby would be disproportionate with the levels of development planned for in the Core Strategy. As AS explained in EIC, this is not a credible proposition. An obvious point which bears repeating is that CS1 does not seek to impose a cap on housing numbers within the Service Centres. The figure is not a maximum, nor does it provide a breakdown of growth to each of the individual Service Centres.
34. During preparation of the CS, delivery already exceeded the figure set out in CS1, well in advance of its adoption in 2015 (see CS fig. 1, p.30 of CD6.03)¹³. The policy was prepared in this context. It was open to plan makers to change approach on the basis of this figure, but they did not do so. It is quite wrong now to suggest that the fact that

¹² Charnwood Landscape Capacity and Sensitivity Assessment Charnwood Borough Council CD 6.09 prepared by LUC - February 2021, - Appendix A - Sileby PSH474 (pdf pages 99-101). Assessment of the appeal site is recorded as low-moderate landscape sensitivity to 2-3 storey residential development. (summarised pdf pp15 & 17 also)

¹³ The supply, set out through completions and commitments, was 3,460 dwellings – thereby already exceeding the 3,000 homes growth referred to in with policy.

delivery exceeds supply justifies a different approach as this would be at odds with the strategy behind the plan.

35. The fact that the services villages have taken up some of the slack of the gross under-performance of the SUEs adjacent to higher tier settlements is a matter of indifference and doesn't warrant the conclusion that there is tension with CS1. Indeed, were it to be the case that there was reason to conclude that Sileby had accommodated disproportionate growth then not only would that have been referenced in the RfR, but it would not now be proposed to accommodate further (335 units) growth for the eLP period. The point goes nowhere and there is no rational basis to conclude that there is a conflict with CS1, let alone a tension with a strategy where the main components have failed to deliver.

36. The Settlement Hierarchy Paper (CD6.11) acknowledges that whilst within the same 'hierarchy tier' Barrow upon Soar, Mountsorrel and Rothley are less sustainable settlements than Sileby. It is both reasonable and proportionate to conclude that more growth should be delivered in Sileby than the less sustainable settlements within that tier. Further, AS's evidence is that Sileby is entirely suitable and capable of additional residential growth. This view is clearly shared by the Council, as the emerging Local Plan seeks to direct approximately 2,747 dwellings to the Service Centres, including 345 dwellings to Sileby. The Council thus continues to accept that Sileby is a suitable location for additional homes. Additional dwellings in Sileby would not be excessive or disproportionate. Consequently, AS concludes that there is no conflict with Policy CS1. In the alternative, if contrary to the Appellant's case the Inspector were minded to attach weight to conflict with Policy CS1, then only limited weight should be afforded, as the policy is clearly out-of-date (and is agreed to be out of date).

Reason for Refusal 2: Contributions

37. It is agreed with the LPA that this RfR is resolved by the s106.

38. The tenure split of the 51 Affordable Dwellings accords with the Housing SPD with the following split set out in the draft conditions and S106: 77% rent and 23% shared ownership. Accordingly, the proposed development makes adequate provision for affordable housing.
39. The proposal's effects on biodiversity could be satisfactorily addressed by detailed measures secured by condition and approved as part of the detailed reserved matters application. The proposed development makes adequate provision in respect of biodiversity and ecology.
40. The onsite open space provision and its ongoing management and maintenance is secured through the S106 agreement. The Officer's Report considers that, overall, the development would provide good quality open space above the level required for the quantum of development proposed. Several conditions relating to access and sustainable travel are included within the schedule of conditions, including provision of a Travel Plan to promote the use of sustainable modes of transport. In addition to these, contributions to be secured through the S106 agreement. the proposal is considered to comply with policy requirements.
41. In respect of Library and Waste Services, contributions are to be secured through the S106 agreement.
42. Mr Gould accepted that covering open space, education, sustainable travel, waste, and libraries contributions by way of S106 agreement could overcome RfR2 in these respects.
43. Contributions are to be made towards improved football pitches at the Memorial Park and/or enhanced pitches at the Cricket Club or Bowls Club, and towards the creation of community growing space or additional allotment plots at Memorial Park. These are included in the S106.
44. Without adequate justification for the contributions, the Appellant's position is for £0 contribution towards healthcare provision, for the reasons explained in detail by Mr

Hunter and Ms Smedley in writing and which are only summarised here. Noting that, fundamentally this goes to whether the blue pencil clause in the s.106 is engaged and not as to whether or not permission should or should not be granted¹⁴.

45. A planning obligation is only appropriate where it addresses those matters which are necessary to make the development acceptable in planning terms¹⁵. It is firmly submitted that a CCG contribution is not necessary to make a development acceptable in planning terms, as the NHS Constitution means that it cannot be necessary¹⁶. If a development is funding places, whilst the NHS is also funding the exact same places, then that is double funding (BH LC CGC Rebuttal Note, at [1.3]). Expansion works by a GP Practice, however they are financed, can be reimbursed by a particular funding stream based on rental value creating inherent risk of double funding¹⁷ (BH LC CGC 27th April Rebuttal Note, at [2.1]).

46. A GP Surgery is either ‘Open’ and accepting new Patients or ‘Closed’ and not accepting new Patients. The CCG confirm that the lists of both Surgeries are Open (CGC letter of 27 April 2022), they therefore they can be assumed to have capacity for additional patients absent clear evidence to the contrary. Capacity at Banks Surgery and Highgate Medical Centre could be improved by the introduction of longer operating hours up to a standard 60-hour week (BH LC CGC 27th April Rebuttal Note, at [2.8]). This is not a case where it is suggested that GPs stop working outside of patient hours (as the CCG seem to infer), rather it is that the CCG simply hasn’t proven its case that there is a proper justification for matters that are not otherwise funded in order to secure capacity for the patients generated by this development who are not already locally registered with a GP. Importantly, this is not a case where funding is being sought for a new site or new building, in order to facilitate capacity being increased.

¹⁴ Cl. 4.2 of the s.106 obligation

¹⁵ The first test under the CIL regulations.

¹⁶ Principle 1 of the NHS Constitution states that the NHS provides a comprehensive service available to all. If that is the case, Planning Obligations are not necessary to make a development acceptable in planning terms.

¹⁷ Note that there is no clawback function in a Section 106 agreement for Health contributions (BH LC CGC 27th April Rebuttal Note, at [2.3]).

47. Further, the Secretary of State’s letter confirming the Inspectors Report of 2008 made clear that further funding for additional GPs is not as a matter or principle the responsibility of the development sector (BH LC CGC 27th April Rebuttal Note, at [2.9]). That planning judgment on the part of the Secretary of State is robustly commended to the inquiry.
48. In terms of education the parties disagree with respect to the 5 points set out in the dedicated SoCG, and despite the forensic game of ping-pong with the LEA – the issues are clear on the basis of the evidence presented to the inquiry. The starting point is that where there is sufficient capacity in the existing Education landscape to accommodate new pupils generated by a development then a County Council as LEA, is not entitled to education funding via a planning obligation¹⁸; for all of the reasons explored in the education session, this is emphatically the case here.
49. LCC’s own evidence establishes that planning obligations from the Cossington Road development are **not** necessary to make the development acceptable in planning terms.
50. By way of overview of the two most contentious areas (primary schools and secondary schools), the following is apparent following exchange of evidence and discussion during the inquiry.
51. Sileby Redlands Primary School and Highgate Community Primary School¹⁹ are **not** forecast to go over capacity. LCC has confirmed that Cossington Primary School is being expanded by at least 0.5 Forms of Entry, paid for by two approved developments.
52. Similarly, secondary school infrastructure has not been established as necessary to make the development acceptable in planning terms. LCC has simply not demonstrated that there is a deficit of places at Humphrey Perkins School, or that the school will need to grow to accommodate the pupils of this development. LCC has provided clear and

¹⁸ See Land off the A38, Coombe Hill, Gloucestershire APP/G1630/20/3257625. Appendix 1 to BH Rebuttal to LCC Education Contributions Letter of 1st April 2022.

¹⁹ See Table 3 and [2.6] of BH Rebuttal to LCC Education Contributions Letter of 1st April 2022, which is also the third Table in LCC’s 1st April letter.

unambiguous data confirming that there are three Secondary Schools with links to Sileby that should be considered appropriate capacity.

53. For all of the morass of information that has been presented by LCC, and despite the recognition that we live in a time where public sector funding is stretched, the LEA simply hasn't discharged the evidential burden upon it to demonstrate that funding is warranted in this case to increase capacity at any stage of the education of the children who would be generated by this development and who are not already in the local education system.

Overview of the RfR

54. This appeal should be allowed. The reasons for refusal do not stand up to scrutiny. It is firmly submitted that even if harm is caused by the Appeal Scheme this harm is rather decisively outweighed by substantial public benefits and so the Appeal should be allowed. Turning then to the merits of the appeal scheme through the prism of the Inspector's main issues:

The Inspector's First Main Issue: Location of Development

55. The first main issue is: whether the proposed development would be in a suitable location having regard to the development plan and national policies.

56. AS breaks this topic down into two questions: whether spatially, Sileby is an appropriate location for residential growth and secondly, whether there are any site-specific reasons which would render the site unsuitable for development. AS notes that it is agreed that Sileby represents one of the more sustainable settlements in Charnwood to provide for additional growth. It is also agreed that Sileby is identified as one of Charnwood's seven service centres in the adopted Core Strategy.

57. The CS (CD6.03 at [4.43]) sets out that that Service Centres were designated as they benefit from:

- i. a primary school and good access to a secondary school;
- ii. access to employment opportunities;
- iii. food shops and a post office;
- iv. good access to a doctor's surgery;
- v. a good, regular public transport services to at least one main urban centre and reasonable bus access to nearby villages;
- vi. and a good range of recreation, leisure, and community facilities

58. The CS explains that Service Centres (which cover at least 3,000 dwellings, across 7 settlements, including Sileby) “*have a good range of services and community facilities including shops, schools and health centres. Whilst not appropriate locations for sustainable urban extensions, they provide a sustainable location for a smaller scale of development, appropriate in size to their character and the services and facilities they contain*” (para. 4.19 of the CS (CD6.03).

59. A non-exhaustive survey of Sileby's facilities and amenities finds that Sileby benefits from: two primary schools, two pre-school nurseries, several food shops, two doctors' surgeries, a dentist, optician, vets, florists, hair and beauty salons, a gym, car garages and many cafes, restaurants, and takeaways. Sileby Community Centre offers a range of activities and there are numerous sports clubs, two allotment sites and the Memorial Park.

60. The Council have undertaken a settlement analysis, published within evidence base document Charnwood Settlement Hierarchy Assessment October 2020 Update (CD6.11) when assessed in this document, Sileby scores 11 points, the same as Loughborough, Shepshed, Thurmaston and Birstall (the urban areas). Unsurprisingly given the list of facilities and services set out above, Sileby has far more than the minimum services and facilities required to designate a settlement as Service Centre. AS considers therefore that Sileby is a demonstrably sustainable settlement, suitable and capable for further residential growth. This is the only sensible conclusion to be drawn from the Council's own evidence.

61. As AS explained in EIC, there is a good level of public transport provision including regular bus services to Loughborough and Leicester from within 100m of the site, operating half hourly services during the day, and hourly during the evenings, with journeys taking 25-30 mins in both directions. Sileby has a railway station which serves several villages on the Midland Mainline route and main employment destinations including Loughborough, Leicester, and Nottingham²⁰. This offers access to a wide range of employment, recreation, and leisure opportunities. It is of note that of the remaining Service Centres, only Barrow upon Soar and Syston have a train station on the mainline – even Shepshed in the urban area - does not have a rail station. Consequently, residents from the Service Centres of Mountsorrel, Quorn and Rothley rely on the services provided at Sileby (AS EIC). Sileby not only provides for those living in the settlement but also plays an important role in serving the residents of the wider area (AS EIC).

62. In terms of site-specific matters, except for the response of the Council's Landscape Officer, no objection was received to the appeal proposal from any technical statutory consultee. AS comprehensively addresses the third-party concerns in respect of education/healthcare, highways, flood risk and drainage, and ecology and biodiversity. The Council's landscape case is not accepted for the reasons set out above. There are no site-specific reasons why the Site is unsuitable for development.

63. In terms of sustainable travel, the scheme includes provision of a new bus shelter, display cases and flag & pole as well as raised kerbs allow level access to support modern bus fleets. The S106 also includes for the provision of 2 x 6-month bus passes and a Travel Pack per dwelling to promote the use of sustainable means of transport. Both the highly accessible bus and train services would provide future occupants of the development with a realistic alternative to the private car and help reduce traffic and congestion on local roads.

²⁰ Hourly services operate to these destinations with a 5–10-minute journey into Loughborough, 15 minutes to Leicester and 35 minutes to Nottingham.

64. Policy CS15 seeks to ensure adequate open space is provided to serve the needs of new development. The Illustrative Masterplan creates 5.88ha of new, publicly accessible open space across the site – some 58% of the site and incorporates provision for Parks, Natural and Semi-Natural Open Space, Amenity Green Space, and equipped play, well in excess of the requirements for those typologies which totals just 1.18ha – resulting in a surplus of 4.70 ha open space. The 4.70 ha surplus of open space provision would seek to address existing shortfalls in Natural and Semi-Natural open space provision in Sileby, which should be seen as a benefit.
65. The Officer’s Report considers that overall, the development would provide good quality open space above the level required for the quantum of development proposed and that the proposal is considered to comply with Policy CS15 of the Core Strategy (CD5.02, p.24).
66. It is acknowledged that Saved Policy ST/2 of the 2004 Local Plan restricts built development to within the Limits to Development. As AS addresses in evidence (PoE at 4.37 onwards) the current Limits to Development in the 2004 LP were prepared to reflect a level of housing need derived from the Leicestershire Structure Plan, adopted in 1994, some 28 years ago. That housing need, at 556 dwellings per annum, is half of the current annual need at 1,111 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.
67. It is unsurprising therefore that the Council have regularly allowed a ‘breach’ of Policy ST/2 by approving developments beyond the defined limits, and indeed intend on allocating many sites beyond these current limits in the emerging Local Plan. The Council has granted planning permission for a number of housing schemes outside Sileby’s development limits, including almost all of the development sites shown on the Councils Housing Sites Plan (ID4). Further, the Council is relying upon land outside Sileby’s Limits to Development to contribute towards the Borough’s 5YHLS – amounting to 366 dwellings. These limits cannot be up to date. ST/2 is a policy for the supply of housing, and it is common ground that it is out-of-date. For all these reasons,

only limited weight can be afforded to the policy conflict arising from development outside the Limits to Development.

68. AS notes that a similar conflict arises with Policy G1 of the Sileby Neighbourhood Plan, which seeks to restrict development on land outside of the Limits of Development because the Site lies outside of those Limits, resulting in a conflict. The SNP was made over two years ago and has no unreserved housing allocations, consequently the provisions of paragraph 14 of the NPPF are not applicable. Policy G1 SNP is a policy for the supply of housing, and it is common ground that it is out-of-date. In common with policy ST2, only limited weight can be afforded to the policy conflict.

The Overall Planning Balance

69. Policy CS1 of the Core Strategy (CD6.03) sets the development requirements for Charnwood over the period 2011-2028. This includes the provision of at least 13,940 dwellings²¹. CS1 sets out how this growth will be delivered spatially, including significant Sustainable Urban Extensions. To date, no dwellings have been delivered in any of the SUE locations, despite the CS Trajectory anticipating that 2,245 dwellings were to be delivered by now (up to and including 20/21 monitoring year).

70. It is agreed that the 2004 LP and 2015 CS are now more than five years old (SoCG CD10.03). The Council is unable to demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer (5%), as set out in paragraph 74 of the NPPF). (SoCG CD10.03) The supply is 3.34 years – less if category B sites are to be excluded. 12 months further on and it is understood that the 5YHLS position hasn't numerically improved and that the SUEs still aren't delivering – with the latest position being a mere 3.23 years supply.

71. The eLP isn't an imminent solution as Mr Gould would have one believe. The emerging Local Plan awaits full scrutiny through the Examination process and can only be

²¹ equivalent to 8 820 dwellings per annum, derived from the 2014 Strategic Housing Market Assessment (SHMA).

afforded limited weight. (SoCG CD10.03). The evidence base is incomplete, there are substantial controversial issues to address which go to the heart of the eLPs strategy; and the issue of accommodating Leicester's overspill needs hasn't been grasped at all. This is not an 'everyday' set of issues to resolve – this is a highly controversial local plan that will need the most careful scrutiny. And yet, without knowing much about it and the principal controversial issues Mr Gould confidently asserted that adoption next summer would be 'achievable', before conceding that such a date would be 'very much a best case'. With respect it may be 'achievable', but it is not very probable – and it is a matter of speculation when the eLP will come to the rescue of the LPA which continues to fail to meet the minimum requirement of Government. In XX HR put to AS that if things go to plan then even with a hearing on main mods that the plan could be adopted by the end of 2023, and fairly she agreed that this could happen. BUT, it took ReX to find out what level of confidence AS had in such a prediction – ie that there is every prospect that things won't go to plan and that suggesting adoption by the end of 2023 is no better than speculation. To suggest that the appeal should be dismissed in part because one has downgraded the benefit of meeting an immediate need for more housing due to the prospect that things might get better by Q1 2024 is Micawberesque²².

72. The impact is upon the lives of real people in real housing need; and the only way to resolve the immediate need is by the grant of more PPs in sustainable locations. Or to use HR's words – to make the difficult and unpalatable decisions now. With respect the LPA may have done so elsewhere but more needs to be done. If AC is right in his assessment of this site – and it is firmly submitted that he is – then it is a sustainable and accessible site which can bring real benefits and it ought to have been consented last year.

73. Against this background, it is agreed that the policies most important for determining the planning application are out of date, and that the presumption in favour of sustainable development of NPPF paragraph 11d applies (SoCG CD10.03).

²² Wilkins Micawber was the Clerk from David Copperfield (1850 Charles Dickens), who displayed perpetual optimism that 'something will turn up' even if the teeth of evidence to the contrary!

74. The harms arising from the Appeal Scheme are limited and nowhere near enough to outweigh the benefits of the scheme, let alone when the balance is tilted in line with para 11 of NPPF. The only identified harms arise from conflict with policy which is acknowledged to be out of date, and which cannot attract anything more than limited weight (AS EIC).

75. The benefits of the Appeal Scheme are demonstrably considerable (AS EIC, AS PoE at 8.30):

- i. The delivery of market housing in a sustainable location, within the 5-year deliverable supply of housing window.
- ii. The delivery of a 30% affordable housing in accordance with Policy CS3. The provision of 51 affordable homes (77% rent and 23% shared ownership) would contribute to addressing the acute affordable housing shortfall in Charnwood. The CS seeks to provide 180 affordable homes a year through CS3, based on evidence in the out-of-date 2014 SHMA (CD6.19). The 2017 HEDNA (CD6.20) has an updated need of 392 dpa, and the most recent evidence, the Charnwood Housing Need Assessment (September 2020) (CD6.30) confirms an affordable need of 476 dwellings per annum (Figure 4.16, Page 90, CD6.30). This equates to an increase in affordable need of over 164% in just 6 years in a district with a higher AH need than the rest of the E Mids region. The same table demonstrates a need of 28 dpa in Sileby alone. With an overall Local Housing Need of 1,111 dpa, the affordable housing need equates to 42.8% of this total. In this context, the provision of these homes must be afforded significant weight.
- iii. The delivery of 5.88ha of publicly accessible open space Whilst the primary purpose of this benefit is intended to make provision for the residents arising from the development, the significant over provision of open space for this size of scheme, will help to address existing shortfalls in open space provision in Sileby and will obviously benefit the existing community as well as its future residents,

creating a public resource which no doubt will end up being valued by the local community to whom it will be highly accessible.

- iv. Contributions (c.£56k) to be made towards outdoor sports in Sileby (for an improved football pitches at the Memorial Park and/or enhanced pitches at the Cricket Club or Bowls Club) and (c.£19k) towards the creation of community growing space or additional allotment plots at Memorial Park.
- v. Economic benefits of the proposed development (construction phase and long-term impacts).
- vi. The early delivery of market and affordable housing in a sustainable location, with good access to shops, services, and public transport facilities, reducing the need for the use of the private car.
- vii. The delivery of family housing within walking distance of Primary Schools.
- viii. The environmental benefits of new planting which better reflects the characteristics of the wider landscape.
- ix. The delivery of a new, high quality, sensitively designed edge to the settlement, creating a more positive interface to the countryside.
- x. The delivery of biodiversity net gains significantly more than the target 10%.

76. Weighing harms against benefits AS concludes that the appeal scheme accords with the up-to-date Development Plan with conflicts arising only against policies which are out of date or for which only limited weight can be afforded. In any event, the tilted balance is engaged and the limited harm arising from granting permission simply does not significantly and demonstrably outweigh the benefits of the Appeal Scheme and planning permission should be granted.

Conclusion

77. In conclusion, in favour of the appeal are the significant public benefits which demonstrably outweigh any harm asserted by other parties. The scheme complies with the development plan and should be approved without delay.

78. The balance, tilted or not, is clearly 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 QC

Constanze Bell

27th April 2022

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS